



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/4338

Re: Property at Flat B, Stonefield Green, 21 Lochfield Road, Paisley, PA2 7RG (“the Property”)

Parties:

Mr Paul McCann, c/o 21 Forge Crescent, Bishopton, Renfrewshire, PA7 5FL (“the Applicant”)

Mrs Lilian Onugha, Mr Emmanuel Onugha, Flat B, Stonefield Green, 21 Lochfield Road, Paisley, PA2 7RG (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an order for recovery of possession of the Property

Background

The Applicant was the owner of the Property. The Applicant had let the Property to the Respondent in January 2021. The Applicant wished to recover possession of the Property from the Respondent as he wished to live in the Property himself. The Applicant had served a Notice to Leave on the Respondent on 7 July 2023 requiring the Respondent to leave the Property by 4 October 2023 under Ground 4 of Schedule 3 of the Act. The Respondent had not removed from the Property as they had not managed to find alternative accommodation.

As a result of the Respondent’s failure to remove, the Applicant had lodged an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 seeking an order for recovery of possession of the Property. The Applicant provided as part of his application a copy of the Private

Residential Tenancy between the parties, a copy of the Notice to Leave along with evidence of its service on the Respondent, a s11 Homelessness Notice and proof of service of this on the relevant local authority.

Case Management Discussion (“CMD”)

A CMD was set for 15th May 2024 at 10am by teleconference. The Tribunal was comprised of Mr E Miller (Legal Member) and Miss E Williams (Ordinary Member). The Applicant was present and represented himself. The Respondents were both present and represented themselves.

Findings in Fact & Law

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property having purchased it on 20 November 2020
- The Applicant had granted the Respondent a Private Residential Tenancy of the Property with an entry date of 20 January 2021.
- The Applicant had served a valid Notice to Leave on the Respondent under the Act to terminate the tenancy, on the ground he wished to live in the Property himself
- The Respondent had not removed from the Property as they had been unable to find alternative accommodation
- The Tribunal found that the Applicant had a genuine desire to live in the Property
- In the overall circumstances of this case, as set out in the Reasons for Decision below, the Tribunal was satisfied that it was reasonable to grant the order for possession in favour of the Applicant
- The first date that the order for possession could be enforced was 1 July 2024

Reasons for Decision

Aside from the failure of the Respondent to remove from the Property, the parties enjoyed a good relationship. Both parties generally communicated with each other and understood the others position. There were no breaches of the lease agreement. All rent was up to date.

The Applicant submitted that he had bought the Property in 20 November 2020 following the death of his wife from cancer with the intention of moving in to it. Unfortunately, his daughter was also then diagnosed with cancer. His daughter was separated from her husband and she had two young children. In order to support his daughter and his grandchildren the Applicant moved in with his daughter. He let out the Property to the Respondent.

The Applicant's daughter died from cancer on 11 December 2022 and the Applicant's grandchildren moved to live with their father. The property the Applicant had been living in with his daughter was held in trust for the Applicant's grandchildren. It required to be let out to generate income for the trust. As a result, the Applicant had required to move out. He therefore sought to bring the tenancy of the Property to an end in

order that he could live in the Property himself. He was in temporary accommodation with his new partner but the bulk of his possessions were in storage.

The Respondent submitted that they understood the position of the Applicant and accepted that he required the Property back. They accepted that he wished to live in the Property himself. They were willing to move out of the Property but they had been unable to find alternative accommodation. The Respondent had 4 children who lived with them and so they required a minimum of 3 bedrooms. There was limited accommodation available locally that would suit them. They advised that they checked daily for private accommodation but had been unsuccessful in any applications. They had registered with the local authority and local housing associations for accommodation. They had provided evidence of the Tribunal application to these accommodation providers in an effort to prioritise their case. The Respondent did not object to an eviction order being granted but asked for an extended period of 6 months before it could be enforced.

The Applicant, whilst sympathising with the position of the Respondent, was not agreeable to an extension. The accommodation he was in with his partner currently was not suitable. It was a two bedroom flat and his partner's elderly mother also lived there. There was limited space to have his grandchildren visit and they could not stay overnight. He found this difficult given how close he had been to his grandchildren having previously stayed with them.

The Tribunal considered the position. The statutory requirements in terms of service of a valid Notice to Leave and s11 Homelessness notice had all been complied with. It was not disputed by the Respondent that the Applicant did intend to live in the Property and that he had good reason to want to do so. It was accepted that the Applicant had already waited a significant period without being able to move in to his Property.

The Tribunal considered that the Applicant's reasons for requiring the use of his Property were both reasonable and compelling. The Applicant had little other alternative accommodation and the lack of availability of the Property to him was prejudicing his relationship with his grandchildren. As a result, whilst the Tribunal were sympathetic to the position of the Respondent, they felt the position of the Applicant was such that the eviction order should be granted.

The Tribunal considered that it was, in the circumstances, reasonable to grant the eviction order. The Tribunal did not consider that it was reasonable to give any material extension to the date for eviction as sought by the Respondent. The Tribunal was aware that the housing market was very challenging for tenants at the moment. That position was unlikely to change in the short to medium term. The Tribunal did not doubt that the Respondent would search for other properties if a delayed eviction date was given. However, there was a material prospect that a delayed eviction date would not mean they would find accommodation any quicker because of the current market conditions. The status quo would likely still remain and the Applicant would have been further prejudiced. The Respondent accepted that they did need to move and it appeared to the Tribunal that the best prospect of them being offered alternative accommodation would be for the eviction order to be granted. This would then oblige the relevant local authority to provide them with alternative accommodation under

homelessness legislation. Without an eviction order, the Respondent would likely continue to languish on local authority and housing association waiting lists.

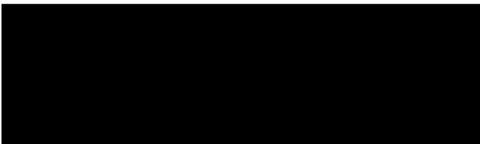
The Tribunal did note that the Respondent had 4 school aged children. Whilst they would, as a result of the eviction order, be rehoused by the local authority, this may not be particularly convenient depending on the location of their new accommodation. The Tribunal were also conscious that schools implemented new timetables and subjects in the last month of term to adjust pupils for the upcoming year. Being relocated just at the very end of the school year may have a detrimental impact on the children. The eviction order would, ordinarily, be enforceable from mid-June. The last day of the school term for the relevant local authority area was 27 June 2024. The Tribunal felt a short extension to 1 July 2024 was reasonable to avoid disruption to the children. The Applicant understood the rationale of the Tribunal in this regard.

Decision

The Tribunal determined to grant an order for recovery of possession of the Property in favour of the Applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



E.Miller

Legal Member/Chair

15 May 2024

Date