



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/24/0669

Re: Property at 8 Sandhaven Gardens, Dundee, DD5 1RJ (“the Property”)

Parties:

Mr Zafar Saleem, 57 Strathearn Road, Dundee, DD5 1PG (“the Applicant”)

Ms Rachel Jones, 8 Sandhaven Gardens, Dundee, DD5 1RJ (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and John Blackwood (Ordinary Member)

Decision

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

Background

1. The application made by the Applicant is for an order for possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, Ground 5 of Schedule 3 of the Act. It was accepted by a legal member of the tribunal on 30 April 2024.
2. The Applicant produced along with the application the tenancy agreement, which was not in the form of the model Private Residential Tenancy (‘PRT’); Notice to Leave and accompanying correspondence to the Respondent; a section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 which had been served on the relevant local authority; and a signed letter from the Applicant’s son in support of Ground 5.
3. Written Representations were submitted by the Respondent’s Representative timeously.
4. The paperwork was served by the Tribunal on the Respondent and the proper intimations were sent to the Parties assigning a Case Management Discussion.

The Case Management Discussion

5. The Case Management Discussion (CMD) took place on 10 July 2024 by Conference call. Both Parties Representatives participated, Mr Campbell, Administrator, for the Applicant and Miss Gibson, trainee solicitor for the Respondent. The reason for the CMD was explained and the paperwork produced was examined and discussed along with the Respondent's written representations.
6. The Respondent accepts that the Parties agreement over the Property is a PRT and that the Notice to Leave served on her is legally valid.
7. The Applicant's Representative explained to the Tribunal that the Applicant is the owner of the Property. His youngest son is currently living in a small flat up two flights of stairs along with his wife and two children aged four and seven years. The couple are expecting their third child later this year. It is their wish and intention to move into the Property as being a three bedroom and is more suitable for their growing family and not up a flight of stairs. In response to matters discussed at the CMD, the Applicant is said to be owed a substantial sum in rent arrears (over six months' rent or thereby) that was not paid and a separate claim for that is still to be determined.
8. The Respondent's Representative referred to their written submission and explained that the Respondent has three children aged twelve, nine and one years of age and whilst she is settled in the area, understands the landlord's position with respect to his family's needs. There had also been, for her, some significant issues with repair matters during her period of occupation relating *inter alia* to water ingress in the Property, and a Repairing Standard Enforcement Order had been issued by another convened tribunal. A re-inspection was due to take place soon. Her position was that matters remained outstanding; a position not necessarily accepted by the Applicant. The issues had increased her heating bills during the colder months and impacted on her finances. There was a rent arrears figure being carried and her Representative was taking issue with the forum in which the claim had been made and the Parties were in a dispute. Some money had been set aside during the period rent had been withheld due to the outstanding repairs. The Respondent has prepared to seek alternative accommodation and she has a live housing application with a local authority.
9. The Parties were advised that the matter could be determined at the CMD without a Hearing and could decide where there were no contentious issues that needed to be resolved. The Parties Representatives understood this and did not identify any issues in dispute that required a Hearing to be assigned. The tribunal adjourned for a period to deliberate and then reconvened the CMD.

Findings in Fact

10. The Applicant is the owner and Landlord of the Property.
11. The Parties entered into a Private Residential Tenancy over the Property with a date of entry of 1 May 2022.
12. The Applicant served a valid Notice to Leave on the Respondent.

13. A section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 was served on the relevant local authority.
14. The Applicant indicated to the Respondent in February 2023 that his intention was to move his family into the Property as their principal home.
15. The Applicant's youngest son has provided a letter dated 26 March 2024 to the tribunal stating his wish to move into the Property and live there with his expanding family as being more suitable for their needs.
16. The Applicant now wishes to recover the Property for his son and his family to be used as their principal home for the foreseeable future exceeding 3 months in duration.
17. The Respondent lives in the Property with her three children.
18. The Respondent is settled in the area but not in the Property itself.
19. Dues to repairs issues a separate tribunal has issued a Repairing Standard Enforcement Order (RSEO) over the Property. A re-inspection is due to take place soon.
20. There is a dispute, yet unresolved between the Parties in another forum which relates to alleged rent arrears occasioned during the said period of alleged disrepair.
21. The Respondent, not being settled in the Property, has sought alternative local authority accommodation.

Reasons for Decision

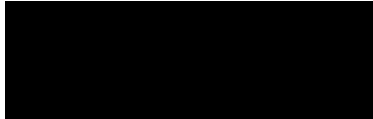
25. The Tribunal was satisfied at the CMD that it had sufficient information upon which to do so and would not prejudice the interest of the Parties. The Tribunal did not consider that a Hearing was needed as there were no controversial matters to be resolved. There were separate matters that were in issue between the Parties relating to the Property and the rent, but these were being dealt with separately. The tribunal however did find that the overview given was helpful as it explained in part why the Respondent was not settled in the Property.
26. It was agreed that a valid Notice to Leave had been served. The Ground on which the Applicant sought recovery was not in issue.
27. Intimation of the application had been made on the relevant local authority by way of a Section 11 Notice, as required.
28. The Tribunal determined that Ground 5 is established and had the benefit of the letter produced to the Tribunal outlining the wishes and needs of the Applicant's son and his family to occupy the Property as their permanent principal home and beyond three months
29. The Tribunal then considered whether it was reasonable to grant an eviction order. The Tribunal accepted the Applicant's reason given for the making of the Application and had the benefit of the letter outlining the wishes and needs of the Applicant's son and his family. The Tribunal accepted the information given by the Respondent that whilst she lives in the Property with her three children her occupation this has not been without some inconvenience which has caused her not to settle there and see it as her long term home. Issues with repairs has resulted in the Parties being involved in a separate tribunal application process. The Tribunal heard that this also had a knock on effect on payment of rent and a separate application for payment

had been raised but still to be determined. The Respondent having taken a pragmatic approach to her longer term housing considerations, including financial, has sought local authority housing. The Tribunal determined that having regard to both Parties respective positions that to grant the order was reasonable.

30. The Tribunal therefore determined to make an eviction order. The decision of the tribunal is unanimous.

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.



Legal Member/Chair

13 July 2024
Date