



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

Chamber Ref: FTS/HPC/EV/23/3927

Property : 23 Maxwell Gardens, Glasgow G41 5JR (“Property”)

Parties:

Mamnoon Asghar and Faiza Pervaiz, 51 Durness Avenue, Bearsden, Glasgow G61 2AL (“Applicant”)

Mazhar Asghar, 51 Durness Avenue, Bearsden, Glasgow G61 2AL (“Applicant’s Representative”)

Umar Ali, 23 Maxwell Gardens, Glasgow G41 5JR (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property but to delay enforcement until 30 September 2024.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Tenancy Agreement which commenced on 19 August 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 19 July 2023 ("Notice to Leave"); sheriff officer certificate of service of the Notice to Leave on 21 July 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 7 November 2023; letters from the Applicant and Shamon Asghar dated 24 November 2023 stating that Shamon Asghar intends to live in the Property and sheriff officer's execution of service certifying service of the Application on 8 March 2024. A Case Management discussion (“CMD”) was scheduled for 15 April 2024 but was postponed until 1 August 2024. The Respondent was advised of the date of the CMD on 21 June 2024.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 1 August 2024 by teleconference. The First Applicant was in attendance and was represented by the Applicant’s Representative. The Respondent was also in attendance.

The Applicant’s Representative told the Tribunal that the First Applicant’s brother and his wife intend to live in the Property. He said that they currently live in the family home in Bearsden. He said there are now 12 people living at that address which is too much. He said that the First Applicant’s brother and his wife wish to start a family. In response to a question from the Tribunal the Applicant’s Representative said that the first Applicant has an interest in two rental properties including the Property.

The Respondent told the Tribunal that he lives in the Property with his wife and 4 children aged 11, 9 and two children aged 7. He said that they do not attend school close to the Property but a school in another area near Paisley Road West close to where the Respondent works. He said there were no special needs in the family that the Tribunal needed to be made aware of. He said that the Property is not suitable for a family of six as it is too small. He said there is mould in the Property. He said that the family want to leave the Property as soon as possible. He said he has been looking for alternative accommodation but the rents are too high and he has not found anything suitable. He said his wife has been in touch with housing associations and Glasgow City Council about alternative accommodation. The Respondent said that he is employed in a logistics warehouse and his wife does not work. In response to questions from the Tribunal the Respondent said that he did not dispute the ground for eviction but he did dispute that it was reasonable for an eviction order to be granted as that would render his family homeless. The Tribunal asked the Respondent if a delay in enforcement of any order granted would assist. He said he did not want to be made homeless.

The Tribunal asked the Applicant’s Representative if he would object to a delay in enforcement. He said that the matter had been going on for too long. He said that he had sympathy for the Respondent but his brother wanted to move into the Property and start a family.

The Tribunal explained to the Parties the options available to the Tribunal including making a decision that day or fixing an evidential hearing and asked the Parties if there was further information they wished to put before the Tribunal at an evidential hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement for the Property which commenced on 19 August 2020.
2. A Notice to Leave was served on the Respondent by sheriff officer on 21 July 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 14 October 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 7 November 2023.
4. The First Applicant's brother intends to live in the Property.

Reasons for the Decision

In terms of section 51 of the Act, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 5 which is that a member of the landlord's family intends to live in the Property. The evidence lodged with the application of intention to live in the Property was letters from the Applicant and Shamon Asghar dated 24 November 2023. The Tribunal considered the evidence provided along with the submissions of the Applicant's Representative made at the CMD and determined that the ground for eviction had been established. The Respondent did not dispute that the ground for eviction had been established.

The Tribunal then considered the question of reasonableness and determined that it would be reasonable to grant an order for eviction but to delay enforcement for a period of one month after expiry of the appeal period. It was apparent that the Property was not suitable for a family of six. The Respondent told the Tribunal the Property was not suitable for his family and that they wished to leave as soon as possible. A delay in enforcement would allow the local authority additional time to identify a property that was suitable for the Respondent's family.

Decision

The Tribunal determined to grant an order for possession of the Property but to delay execution of the Order until 30 September 2024.

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.

Joan Devine
Legal Member

Date : 1 August 2024