



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/23/4417

Re: Property at 57 Marshall Gardens, Kilmaurs, KA3 2TZ (“the Property”)

Parties:

Mr Alexander Muir, Marlene Muir, 71 Kilwinning Road, Irvine, KA12 8SU (“the Applicants”)

Miss Jineieve Bailey, Mr William Leonard Greenlees, 57 Marshall Gardens, Kilmaurs, KA3 2TZ; 41 Kent Drive, Helensburgh, G84 9RT (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicants submitted an application under Rule 109 for an order to evict the Respondents from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 14 June 2024 informing both parties that a CMD had been assigned for 25 July 2024 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers

the procedure to have been fair. The Respondents were invited to make written representations by 5 July 2024. No written representations were received.

The case management discussion – 25 July 2024

4. The CMD took place by conference call. The Applicants were represented by Mr Colin Duck, solicitor. The Second Respondent joined the call and represented himself. The First Respondent did not join the call and the discussion proceeded in her absence. The Tribunal explained the purpose of the CMD. The Second Respondent explained that he does not oppose the application. He vacated the Property in or around October 2022 but has continued to pay rent. The First Respondent and the Respondents' daughter continue to live in the Property. The First Respondent has not yet secured alternative accommodation. It is not known whether the First Respondent has been in contact with the local authority about alternative accommodation.
5. The Applicants representative moved to amend the First Respondent's name from Jenevieve Bailey to Jinieve Bailey. The Tribunal allowed that amendment. The Applicants wish to recover possession of the Property so that they can sell it. The Applicants have already appointed a solicitor to deal with the proposed sale. The Applicants wish to realise the capital of the Property in order to provide financial assistance to a family member.
6. The Tribunal raised with the Applicants' representative the status of the First Respondent. She is not a tenant of the Property and did not receive a notice to leave. The Applicants' representative explained that the Applicants were aware from the outset that the Second Respondent intended to move his family into the Property. It was submitted that although the First Respondent is not a tenant, the Applicants considered it appropriate to give her intimation of these proceedings.
7. The Tribunal adjourned briefly to consider the information provided by the parties. The Tribunal explained that it found the ground of eviction established and that it was reasonable to grant the order.

Findings in Fact

8. The Applicants and Second Respondent entered into a private residential tenancy which commenced 10 May 2019.
9. The Applicants served the Notice to Leave on the Second Respondent by email on 9 May 2023.
10. The Applicants intends to sell the Property.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicants relied upon ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicants had produced a letter from the solicitors instructed by them which confirms the intention to sell. The Tribunal was satisfied that ground 1 had been established. The Second Respondent did not oppose the application. The Tribunal was satisfied in all of the circumstances that it was reasonable to grant the order sought. The order was granted only against the Second Respondent, who was the sole tenant of the Property. The order having been granted today, the tenancy has been brought to an end. Although no order has been granted against the First Respondent, she has no right or title to remain in the Property and was living in the Property by virtue of being the Second Respondent's family.

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.

N Irvine

Legal Member/Chair

25 July 2024
Date