



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/24/0281

Re: Property at 3C Meldrum Road, Kirkcaldy, Fife, KY2 5LP (“the Property”)

Parties:

Mrs Harpreet Kaur, Mr Iqbal Singh, 24 Sir Thomas Elder Way, Kirkcaldy, Fife, KY2 6ZS (“the Applicants”)

Marioara Cirpaci, Ionut Covaci, 3C Meldrum Court, Kirkcaldy, Fife, KY2 5LP (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 5 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis that a member of the Applicants’ family intends to reside in the Property, being Ground 5 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 12 July 2024. The Applicants were represented by Peter Murray, James Thomson & Son,

Solicitors. There was no appearance by or on behalf of either of the Respondents. The Tribunal was satisfied that the application had been intimated on the Respondents by way of Sheriff Officer on 11 June 2024 and accordingly the Respondents had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CNMD could proceed in the Respondents' absence.

3. The Applicants' representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 23 April 2022. The Applicants' brother intends to move into the Property to reside, as he requires to move out of his current place of residence where he lives with his other brother and whose young family is expanding. There is no longer sufficient space for him to stay there. The Applicants require vacant possession in order to enable their brother to move into the Property. A Notice to Leave had been served on the Respondent on the basis of Ground 5 of Schedule 3 to the 2016 Act, on 5 October 2023. The Respondents have failed to vacate the Property.
4. Further, it was submitted that the Respondents have failed to pay any rent since service of the Notice to Leave and have incurred rent arrears of £6,800, which is causing the Applicants financial difficulty. The Respondents were believed to have been claiming Housing Benefit and not paying this over to the Applicants as rent. There have also been complaints of antisocial behaviour within the Property, and the Respondents have failed to allow access to the Applicants' tradesman to repair a leak. The Respondents are believed to be a couple, not in employment, and may have children, although no details of this were known.
5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement (unsigned)
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Affidavit from Applicants' brother
 - (v) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - Findings in Fact
6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 23 April 2022;
 - (ii) The Applicants are the heritable proprietors of the Property;
 - (iii) The Applicants have served a Notice to Leave on the Respondents on the basis of Ground 5 of Schedule 3 to the 2016 Act;
 - (iv) The Applicants' brother has signed an affidavit confirming that he intends to occupy the Property as his place of residence.

- Reasons for Decision

7. The Tribunal was satisfied that the terms of Ground 5 of Schedule 3 to the 2016 Act had been met, namely that the Applicants' brother intends to occupy the Property as his only or principal home and intends to do so for at least 3 months. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Respondents have failed to attend the CMD, and failed to lodge any written response setting out any proposed defence to the application. The Respondent have accrued rent arrears which has caused the Applicants financial difficulty, and have failed to cooperate in allowing access to tradesman to rectify a leak within the property. Against that background, the Tribunal was satisfied that it was reasonable to grant the order.

- Decision

8. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 5 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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 :

Date: 12th July 2024

Fiona Watson