



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/0300

Re: Property at 12 James Crescent, Irvine, North Ayrshire, KA12 0UL (“the Property”)

Parties:

Miss Clare Mulholland, 11 Gearholm Road, Ayr, KA7 4DR (“the Applicant”)

Miss Laura Cooper, 12 James Crescent, Irvine, North Ayrshire, KA12 0UL (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Helen Barclay (Ordinary Member)

Tribunal Members:

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 18 January 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 4 of Schedule 3 to the Act, that the landlord intends to reside in the let Property.
2. The Application comprised the following:

- i) copy tenancy agreement between the Parties;
- ii) copy Notice to Leave with proof of sending;
- iii) copy correspondence from the Applicant's employer confirming that she required to remove from tied accommodation;
- iv) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Ayrshire Council being the relevant local authority.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 1 August 2024 at 10.00 by telephone conference. The CMD was intimated to both Parties.

CMD

4. The CMD took place on 1 August 2024 at 10.00 by telephone. The Applicant was present and unrepresented. The Respondent was present and unrepresented.

5. The Tribunal explained that the purpose of the CMD was to find out if the Application is opposed, if so on what basis and to determine if a Hearing of evidence is required. The Tribunal explained that it had to be satisfied that the Grounds for the eviction order were established, the correct statutory procedure had been carried out and that it was reasonable on account of those facts to grant an Order.

6. Miss Mulholland stated that she still required the Order as she is under pressure from her former employer to vacate the temporary accommodation provided by them. She advised that she and her two sons aged sixteen and ten years are now residing in the third accommodation since having to vacate her tied house following her redundancy. Miss Mulholland explained further that she cannot afford a private tenancy and that her furniture which is being stored in the tied house has been damaged all of which is causing stress and distress to the family. Miss Mulholland confirmed that she does not own any other properties and that there is a mortgage secured against the Property.

7. Miss Cooper stated that she did not oppose the Order but had not been able to secure alternative accommodation, the local authority's advice being to await an Order being granted. Miss Cooper stated that she has three children aged sixteen, thirteen and six years all of whom are at local schools.

8. Both Parties confirmed that there have been no issues with the tenancy and that neither wish to cause the other unnecessary upset.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a tenancy of the Property between the Parties;
 - ii) The Applicant resided in a tied house until being made redundant;
 - iii) The Applicant and her family of school-aged children are being housed temporarily by her ex-employer;
 - iv) The Applicant's ex-employer is pressuring the Applicant to vacate the temporary accommodation;
 - v) The Applicant owns the Property;
 - vi) The Applicant requires possession of the Property to use as her main and principal home;
 - vii) The Applicant intends to reside in the Property as her main and principal home;
 - viii) The Property is subject to a secured mortgage;
 - ix) The Respondent has three school-aged children;
 - x) The Respondent has begun the process of finding suitable accommodation but have been unable to do so to date;
 - xi) The Respondent does not oppose the Application and is willing to remove from the Property when she has secured suitable accommodation

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. Having found that the eviction Ground has been met, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
12. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
13. The Tribunal then had regard to the circumstances of the Parties.
14. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
15. The Tribunal then looked to balance the rights and interests of both parties.

16. The Tribunal accepted that the Applicant has been made redundant and as a consequence has lost her entitlement to tied accommodation. The Tribunal took the view that these circumstances, which were beyond the Applicant's control, have placed her in a precarious position in respect of homelessness and that this position can be resolved by the Applicant residing in the Property which she owns.
17. The Tribunal accepted that the Respondent and her family also have housing needs. The Tribunal had regard to the fact that Respondent does not oppose the Application. The Tribunal also had regard to the fact that, as the Application is not based on any fault on the part of the Respondent, the Respondent, if evicted and made homeless, would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access accommodation suitable for her and her family's needs.
18. On balance, the Tribunal took the view that refusing to grant the eviction order could place the Applicant under a prolonged stressful situation which would not be beneficial to her and her family and that this outweighed the effect which granting an Order would have on the Respondent and her family, who would have a safety net of securing alternative accommodation.
19. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Karen Moore

Legal Member/Chair

1 August 2024.
Date