



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/1094

Re: Property at 58 Harlawhill Gardens, Prestonpans, EH32 9JH (“the Property”)

Parties:

Mr Tarron Scullion, 55 Eskside West, Musselburgh, EH21 6RB (“the Applicant”)

Ms Shannon Sarah Stewart, 58 Harlawhill Gardens, Prestonpans, EH32 9JH (“the Respondent”)

Tribunal Members:

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction

Background

1. By application dated 5 March 2024 the applicant seeks an order for eviction on ground 5 in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Affidavit of Kirsty Souter
 - Notice to leave dated 27 November 2023
 - Section 11 notice
3. A case management discussion (“cmd”) was assigned for 5 August 2024.

Case management discussion – teleconference – 5 August 2024

4. The applicant was represented by Ms Barr, Director, Streets Ahead Scotland. The respondent did not attend and was not represented. The Tribunal determined that proper notice of the cmd had been given to the respondent and proceeded in her absence.
5. Ms Barr sought an order for eviction. She explained that prior to the applicant entering into the present tenancy agreement the property had been his family home. Due to a change in his personal circumstances the property was now required so that the landlord's children could reside in the property with their mother Kirsty Souter. The Tribunal noted that an affidavit and letter from Kirsty Souter had been lodged with the application. She set out her intention to move into the property. She explained that the property had formerly been the children's home. They were now living outside Prestonpans but continued to attend school in Prestonpans. This caused difficulties due to the children's journey to school.
6. The respondent failed to lodge any written defence to the application. Ms Barr advised that she was up to date with her rental payments. As far as Ms Barr was aware the respondent resided with one child. Ms Barr had received an email from the respondent on 13 December 2023 in which she indicated that she would oppose any eviction action. She also stated that she would contact the local authority. Ms Barr advised that the tenant had made no contact since then however, East Lothian Council housing department had been in contact to check when the application would be before the Tribunal.

Findings in fact

7. Parties entered into a private rented tenancy agreement with a commencement date of 15 February 2021.
8. Prior to the tenancy commencing the applicant occupied the property as his family home with his children.
9. Kirsty Souter intends to move into the property with the applicant's children.
10. The respondent has not lodged a written defence to the application and has not entered into the present process.

Reasons for the decision

11. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account oral submissions at the cmd.

12. Ground 5 states:

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

13. The Tribunal was satisfied that a member of the landlord's family intends to live in the property as their permanent home and accordingly part (a) was established. The Tribunal proceeded to consider whether it was reasonable to issue an eviction order.

14. The Tribunal accepted the information provided by the applicant's representative. The Tribunal gave weight to the fact that the applicant's school age children had a lengthy journey to school and would benefit from moving to the property.

15. The Tribunal gave weight to the fact that the respondent did not seek to defend the action. The Tribunal took into account that the respondent resided with her child and had been in contact with East Lothian Council in relation to her housing circumstances.

16. Taking all the above factors into account the Tribunal determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for eviction.

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.

MC Kelly

Legal Member/Chair

5 August 2024

Date