



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/24/0456

Property : 77 Lomond Place, Cumbernauld G67 4JW (“Property”)

Parties:

Kara Gribben, 46 Thorniecroft Place, Cumbernauld G67 4JU (“Applicant”)

HC2M Properties, 10 Sunnyside Road, Coatbridge ML5 3DG (“Applicant’s Representative”)

Byron Venter and Kimberley Venter, 77 Lomond Place, Cumbernauld G67 4JW (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to dismiss the Application.

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 1 February 2023; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 2 November 2023 (“Notice to Leave”); copy statement from Stephen O’Hear of the Applicant’s Representative dated 30 January 2024 in which he stated that he delivered the Notice to Leave by hand on 2 November 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 29 January 2024; an email from the Applicant dated 18 April 2024 in which she stated that she intended for her uncle, Derek Casey, to live in the Property; and sheriff officer’s execution of service certifying service of the Application on 19 July 2024.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 20 August 2024 by teleconference. Stephen O’Hear of the Applicant’s Representative was in attendance as was each Respondent.

Mrs Venter told the Tribunal that the Respondent lives in the Property with two children aged 1 and 5. She said that her daughter has severe asthma. She said that she had been trying to find alternative accommodation but that the private rented sector was too expensive. She said she did not have enough points to qualify for a council house. She said she had viewed a property with Sanctuary but it had mould in two rooms which was a health a safety issue for her daughter.

Mr O’Hear told the Tribunal that he understood that it was the Applicant’s uncle who was to live in the Property. The Tribunal explained that an uncle is not a “qualifying relative” in terms of the Act. The Tribunal expressed the view that the ground for eviction had not been established.

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 1 February 2023.
2. A Notice to Leave was served on the Respondent by personal delivery on 2 November 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 26 January 2024.
3. The Notice to Leave was based on ground 5 which is that a member of the Applicant’s family intends to live in the Property.
4. The Applicant had told the Applicant’s Representative, by email dated 18 April 2024, that the family member who intended to live in the Property was her uncle, Derek Casey.

Findings in Fact and Law

1. An uncle is not a qualifying relative in terms of Schedule 3 section 5 of the Act.

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 to the Act 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 that intention was an email from the Applicant dated 18 April 2024 in which she stated that she intended for her uncle, Derek Casey, to live in the Property.

Ground 5 states that for the purposes of ground 5 a person is a member of the landlord's family if they are a "qualifying relative". The term "qualifying relative" is defined in ground 5 subsection (5) as being "a parent, grandparent, child, grandchild, brother or sister." An uncle is not a "qualifying relative". In those circumstances the ground for eviction has not been established and the Application should be dismissed.

Decision

The Tribunal determined to dismiss the Application.

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 : 20 August 2024