



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/24/2221

Re: Property at 19 Mossywood Road, Westfield, Cumbernauld, Glasgow, G68 9DY (“the Property”)

Parties:

Ms Amanda MacDonald, Flat 102 Residence De La Plage, Havre Des Pas, St Helier, Jersey, JE2 4HL (“the Applicant”)

Mr Kevin MacDonald, 19 Mossywood Road, Westfield, Cumbernauld, Glasgow, G68 9DY (“the Respondent”)

Tribunal Members:

Petra Hennig McFatridge (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 15 May 2024 under Ground 5 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. Notice to Leave dated 2 March 2023 with cover letter and proof of posting and delivery
 - b. Notice to Leave dated 2 February 2024 with cover letter and proof of posting and delivery
 - c. S 11 notice to the Local Authority and proof of email sending same on 10 May 2024.
 - d. Letter from Daniel Rudden dated 7 May 2024

- e. Representations by Applicant dated 26 September 2024 in answer to the Tribunal's directions of 24 September 2024
3. The case documents are referred to for their terms and held to be incorporated herein.
4. On 9 September 2024 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No formal representations were received from the Respondent.

B: Case Management Discussion

1. The Applicant and the Respondent attended the teleconference call.
2. The legal member explained the purpose of the CMD.
3. Ms MacDonald confirmed that there had been no change in circumstances and that she was asking for the order to be granted.
4. Mr MacDonald confirmed that he had not provided any representations or documentation and was not disputing the facts as set out in the application and direction reply. He stated he had received advice that without an eviction order he would be classed by North Lanarkshire Council as having made himself homeless and thus the process had to be followed through. He confirmed that his daughter is 20 years old. He further confirmed that he had been aware of the situation of his sister's son for over 18 months and fully understands the situation.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on in January 2020 and that rent of £450 was payable on the 28th of each month.
2. The parties were the landlord and tenants of said Tenancy.
3. The tenancy continues.
4. The Respondent is the Applicant's brother.
5. He has a 20 year old daughter who stays with him a couple of days per week.
6. The Applicant's son, Mr Rudden, returned to Scotland from Jersey in or around May 2023 with his wife and both have been lodging with another family member until now.
7. They wish to move into the property and start a family.
8. A notice to leave with an incorrect notice period had initially been served on the Respondent in March 2023 and he did not remove from the property.
9. A second Notice to Leave dated 2 February 2024, naming ground 5 of Schedule 3 of the 2016 Act as the ground for the notice, was issued to the Respondent on 2 February 2024, giving the date in part 4 of the notice as 30 April 2024.

10. It was posted special delivery on 2 February 2024. It was delivered on 7 February 2024.
11. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which

the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

Grounds under Schedule 3 of the 2016 Act

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 sub-paragraph (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.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

- (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or
- (d) in a qualifying relationship with a qualifying relative of the landlord.
- (5) For the purposes of sub-paragraph (4)—
 - (a) two people are in a qualifying relationship with one another if they are—
 - (i) married to each other,
 - (ii) in a civil partnership with each other, or
 - (iii) living together as though they were married,
 - (b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,
 - (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,
 - (d) a person's stepchild is to be regarded as the person's child,
 - (e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.
- (7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

2. The Respondent has not made any representations and confirmed at the CMD that he agrees with the facts narrated in the application and in the further representations. He has known that the Applicant's son requires to move into the property for at least 18 months. He is not disputing anything but has been advised by Shelter and the Council that if he moves out without an eviction order from the Tribunal he will be classed as having made himself intentionally homeless, which he cannot do. He did not make any representations to the Tribunal regarding the grounds of eviction, the issue of reasonableness or any other matters although he was given the opportunity to do so repeatedly at the CMD. The facts of the case are not in dispute. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and to make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged and the representations made by both parties at the CMD.

4. The Tribunal had issued a direction on 24 September 2024 raising the issue that due to the late delivery of the Notice to Leave, the notice period actually received by the Respondent was 83 rather than 84 days. The Applicant had made detailed representations on the matter. In terms of S 52 (4) of the 2016 Act the Tribunal considers it reasonable to allow the application to proceed in terms of S 52(4) because the notice period was only one day short and the Respondent was fully aware of the circumstances and had in fact received a previous notice the year before. He took no issue with the Notice to Leave. The Applicant had sent the document Special Delivery and could not have been aware that it would take 5 days to be actually signed for by

the Respondent. She also waited further until May 2024 before she made the application. Overall the Respondent had due notice of the circumstances and the fact that the landlord wished to end the tenancy for over 18 months and there was no prejudice to him from the delivery arriving one day late.

5. The Tribunal found that Ground 5 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence that the Applicant's son requires the property for himself and his wife as he currently lodges with family members, having returned to Scotland from Jersey. The Applicant has no other property to offer him. He and his wife wish to start a family and it would not be reasonable to do so whilst they do not have their own home. In terms of ground 5 (5) (b) a son is a qualifying relative.

6. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no dependent children living with him. His daughter is 20 years old and only visits a couple of days a week. No specific needs of the Respondent to live at the specific address have been raised. He has not provided any information advising of problems accessing suitable alternative accommodation.

7. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of a reasonable need of her son to move into her property and his letter confirms that this is and has been his intention for almost a year. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 5 of schedule 3 of the Act.

9. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 14.11.2024.

E : Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 5 of Schedule 3 of the Act.

F: 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.

Petra Hennig McFatridge

14 October 2024

Legal Member/Chair

Date