



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2247

Re: Property at 11 School Street, Chapelhall, Airdrie, ML6 8UQ (“the Property”)

Parties:

Miss Laura Raeside, 3 Dalry Place, Chapelhall, Airdrie, ML6 8HS (“the Applicant”)

Miss Arlene Wilson, Mr Allan Hassard, 11 School Street, Chapelhall, Airdrie, ML6 8UQ (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicants against the Respondents. The Tribunal delayed execution of the order until 6 January 2025.

Background

1. An application was received from the Applicant on 21 May 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). The application sought recovery of the property under Ground 4 (landlord intends to live in let property) as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form in respect of the application were:
 - (i) Copy Notices to Leave (one for each Respondent) dated 11 December 2023 citing ground 4, and stating the date before which proceedings could not be raised to be 24 February 2024.

- (ii) Copy “certificates of service” signed by the Applicant, stating that she had served the Notices to Leave personally on the Respondents on 1 December 2023.
 - (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council, together with proof of sending by email on 16 May 2024.
3. Further to a request from the Tribunal administration, further information regarding service of the Notices to Leave was received from the Applicant on 6 June 2024.
 4. The application was accepted on or around 9 July 2024.
 5. No written representations were received from the Respondents prior to the case management discussion (CMD) which was scheduled for 19 November 2024.

The case management discussion

6. The CMD was held by teleconference call on 19 November 2024. The Applicant was present and represented herself on the teleconference call. Both of the Respondents were also present on the teleconference call.

Preliminary issues

7. The legal member noted that there was no copy of the tenancy agreement on the case file, albeit this was not a requirement for a valid application under rule 109. The Applicant advised that she had an electronic copy of the tenancy agreement at home, but that she was unable to send it to the tribunal during the CMD as she was at work.
8. The legal member noted that the Notices to Leave stated that the tenancy agreement had commenced on 1 April 2023. The Applicant and both Respondents confirmed that this was correct, and that the tenancy agreement was in the standard form for a private residential tenancy agreement.
9. The Tribunal therefore accepted that there was a private residential tenancy agreement in place between the parties which had commenced on 1 April 2023.
10. Both Respondents also confirmed that they had received the Notices to Leave which the Applicant had posted through their letterbox by the Applicant on 1 December 2023. The Tribunal therefore accepted that the Notices had been validly served on the Respondents.

The Applicant's submissions

11. The Applicant told the Tribunal that she had been in a long term relationship with her former partner, with whom she has two children aged 3 and 8. The relationship broke down in October 2023 and she and the children had been living in the former family home since then. Her former partner had moved out and was currently living with his parents. He owns the former family home in his sole name and is keen to move back into it as soon as possible, so that he can have the children to stay with him when he has access. At present, he and the children are sharing a room when they come to stay at his parents' home.
12. The Applicant confirmed that she intends to live with her children in the property at 11 School Street, Chapelhall, Airdrie, once the Respondents have moved out. She intends to live there in the longer term. She comes from the village of Chapelhall and her family are all in the area. Her son is at primary school there and her daughter will start school in August 2025. The relationship with her former partner is difficult. She is feeling under pressure to move out and the situation is affecting her mental health. She had considered other housing options but she had nowhere else to go.

The Respondents' submissions

13. Both Respondents confirmed that they did not wish to oppose the application and said that they understood that the Applicant needed to get the property back to live in it herself with her children.
14. The first Respondent, Miss Wilson, told the Tribunal that she and Mr Hassard, the second Respondent, had moved from Airdrie to Chapelhall to take up the tenancy. Their son had been about to start primary school and her family were all in the village. Her difficulty was that she had nowhere else to go. She and Mr Hassard were no longer together and she needed to find somewhere else to live with their 6 year old son. She had recently lost her job and her financial situation was very difficult. She did not want to uproot her son from school and she was unable to afford private childcare. Her parents live in the village and she is reliant on them for childcare.
15. Miss Wilson had applied for social housing and had been in regular contact with North Lanarkshire Council. There was little, if any, social housing in the immediate area. The Council had told her to contact them again after the CMD. They had advised her that she and her son may end up in emergency accommodation. She was unable to afford the deposit for another private tenancy and private rents were too expensive (although the Applicant noted that, assuming that the property was still in the same condition as at the start of their tenancy, she anticipated that the Respondents' deposit for their current tenancy would be returned in full). There was no possibility of her being able to stay with family members.

16. Mr Hassard said that he did not have much to add. His priority was finding somewhere for his son to live. He was not sure where he would go, but if necessary he could say temporarily with a friend.

Findings in fact

17. The Tribunal made the following findings in fact:

- The Applicant owns the property and is the registered landlord for the property.
- There was a private residential tenancy in place between the Applicant and both Respondents, which commenced on 1 April 2023.
- The Notice to Leave was validly served on the Respondents personally by the Applicant on 1 December 2023.
- The Respondents have now separated and are currently living in the property with their 6 year old son.
- The Applicant is currently living in the former family home, which is owned by her former partner, with her two children ages 3 and 8.
- The Applicant intends to live in the property with her children as her only or principal home for at least 3 months.

Reasons for decision

18. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

19. The Tribunal first considered whether the legal requirements of ground 4, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 4 states:

“Landlord intends to live in property

4(1) It is an eviction ground that the landlord 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) the landlord intends to occupy the let property as the landlord'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)References to the landlord in this paragraph—

(a)in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b)in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.”

20. While there was no affidavit by the Applicant before the Tribunal, this is not a requirement, but is simply evidence tending to show that the landlord has the intention to live in the property. The Tribunal heard oral evidence directly from the Applicant regarding her intention to do so. The Tribunal found the Applicant to be credible in her evidence, and it was clear that she wished to move in to the property as soon as possible. The Applicant's intention to live in the property was not challenged by the Respondents. The Tribunal therefore determined that the Applicant intends to live in the property as her only or principal home for at least 3 months.
21. The Tribunal then carefully considered whether it was reasonable to issue an eviction order in all of the circumstances of the case.
22. The Tribunal noted that the current situation was very difficult for all of the parties involved. It was clear that the Applicant was keen to get the property back as soon as possible so that she could move into it with her children. She had been living in her former partner's home for more than a year. The relationship with her former partner was difficult, and she was finding the situation very stressful. She did not want to be in her current situation any longer than necessary, and clearly also felt sympathy for the Respondents, who were also facing challenging circumstances.
23. The Respondents understood the Applicant's situation, and accepted that she was entitled to get her property back, but currently had nowhere else to go. Like the Applicant, the first Respondent was reliant on the support of family members who lived locally and had a child who was currently at school in the area. She had also separated from the second Respondent and was

experiencing difficult financial circumstances. The second Respondent also had nowhere else to go beyond sleeping on a friend's sofa.

24. The Respondents did not wish to oppose the application and accepted that they would have to leave the property. While it may be difficult for the first Respondent to obtain social housing, the Council would provide her with assistance in finding alternative accommodation.
25. Having carefully considered the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. The Tribunal gave particular weight to the fact that the Respondents did not wish to oppose the application and accepted that they would have to move out.
26. Before deciding to grant the order, the Tribunal had sought the views of both parties on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, given the upcoming Christmas period and the difficult circumstances of the Respondents.
27. The Applicant told the Tribunal that she wanted to get her property back as soon as possible, and had hoped to be able to move into it before Christmas.
28. The Respondents said that while they understood the Applicant's position, they believed it was in the best interests of their son to be allowed to stay in the property until after Christmas.
29. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant. The Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order until after the festive period. It was sympathetic to the Applicant's wish to move in before Christmas. It noted that were the eviction order to be granted according to the usual timescale, the eviction date would be just a few days before Christmas. On balance, therefore, the Tribunal considered it reasonable to give the Respondents two further weeks over the festive period, which would also give them a bit longer to find alternative accommodation.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delays execution of the order until 4 January 2025.

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.

Sarah O'Neill

Legal Member/Chair

19 November 2024
Date