

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/24/0906

Re: Property at 66 Brent Road, Thornliebank, Glasgow, G46 8JG (“the Property”)

Parties:

Mrs Aneeqa Ali, Flat 2/2, 22 Woodfarm Road, Thornliebank, G46 7EY (“the Applicant”)

Ms Lauren Nixon, 66 Brent Road, Thornliebank, Glasgow, G46 8JG (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background
- 1. This is an application for an eviction order against the Respondent, who occupies the Property on the basis of her private residential tenancy agreement with the Applicant. It called for a hearing at 10am on 16 December 2024 at the Glasgow Tribunal Centre. The Applicant was present in-person and was represented by Ms Wooley of Bannatyne Kirkwood France & Co., solicitors. The Respondent was present in-person and presented her case on her own behalf.

- Findings in Fact

2. The Applicant purchased the Property in 2006 and lived there with her family from 11 April 2011 to 20 September 2016.
3. On 14 November 2016, the Respondent moved into the Property in terms of an assured tenancy.
4. In or around June 2018, the Applicant decided to leave the rented accommodation she was staying in, due to an impending rise in her rent.
5. At that point, she moved in with her brother and his family, meaning two families of five were sharing a two-bedroomed property.
6. The Respondent's contractual assured tenancy was terminated on 14 November 2019, by the Applicant giving notice to quit.
7. This was later replaced by a private residential tenancy with a start date of 14 September 2020.
8. No later than the summer of 2023, the Applicant formed the intention to move back to the Property to use as her only home, for the foreseeable future. By that time, her relationship with her brother had deteriorated and her living situation was untenable. She maintains that wish.
9. On 4 October 2023, the Applicant sent a notice to leave to the Respondent, indicating that she would rely on Ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any proceedings to follow.
10. The Respondent has two children aged 11 and 8 years old, who attend a local school. One of her children is currently being assessed as potentially having ADHD/ ASD.

11. The Respondent has attempted to find alternative accommodation, but so far has not been successful. She has been told that she will be prioritised for re-housing by the local authority and may be placed in temporary accommodation, if she is issued with an eviction order.

- Reasons for Decision

12. The Tribunal heard evidence from the Applicant and the Respondent in-person and was in receipt of various documents to support their positions.

13. In essence, the Respondent's case was that she did not believe that the Applicant had the intention required by Ground 4. To support this, she pointed to previous 'notices' that the Applicant had sent to her, one in 2018, one in 2019: and to a more official notice, in form AT6, that accompanied her aborted attempt to evict the Respondent when she lived at the Property under an assured tenancy. In none of these did the Applicant mention an intention to return to the Property, though her position now was that she had wanted to do so since 2018.

14. The Respondent also pointed to an error in the original affidavit that was submitted to support the application, where the Applicant suggested she lived at the Property until the middle of 2020. This error was raised at the case management discussion where the hearing was fixed and was addressed by the Applicant in a further affidavit, which corrected the record and indicated the error was due to getting dates, "muddled."

15. In-person, the Applicant presented as being truthful; and seemed reliable, at least insofar as she was relating matters concerning her current situation and intentions. She did become a little muddled with some of the historic dates; but the essentials of these were attested to independently in letters from the relevant Council Tax authorities, to the effect that the dates recorded in the revised affidavit were accurate. She was candid in admitting that she had previously not dealt with matters concerning the tenancy in a formal manner

and explained her not having referred previously to her wishing to move into the Property on that basis.

16. The Respondent also presented as truthful and reliable; but conceded herself (correctly) that her evidence was really of a circumstantial nature. She considered it too much of a co-incidence that the Applicant had tried to remove her in 2019, not relying on this ground, shortly after (she said) she had reported various issues with the Property. That led her now not to believe that the true motivation in evicting her would be for the Applicant to live there.
17. The Tribunal believes the Applicant is telling the truth in relation to her current intentions. Her evidence that she is currently living in overcrowded circumstances, and that her relationship with her brother has now deteriorated to the point where she had been asked to leave, is essentially unopposed. This provides a clear motivation for the Applicant to be looking for somewhere else to live: and therefore lends credibility to her position. No contrary evidence was presented against that, other than a general doubt on the part of the Respondent that it could be truthful. The Tribunal was not able to conclude that that motivation was there in 2018, or even 2019; but it does accept that it existed by the time of the service of the notice to leave in this case, in October 2023, after 5 years of the arrangement, and with families having grown older in the meantime.
18. As an important sidenote to this, it is worth mentioning that in reaching this conclusion, the Tribunal afforded no weight to the letter that was submitted purporting to be from the Applicant's brother and confirming her description of her current living circumstances. The Applicant's brother was not at the hearing to speak to the letter or be cross-examined on it. On that basis, it was of no real evidential value. Nonetheless, as Ms Wooley stated in her submissions, the essential points were covered by the Applicant herself in her evidence, and the letter was therefore superfluous, in any event.
19. Having accepted the essentials of ground 4 were established, the Tribunal had to consider whether it is reasonable to grant the order. Again, the

Applicant's current circumstances weigh heavily to suggest that it is. There will undoubtedly be prejudice to the Respondent and her family. There is some mitigation to this, however, in that she will be entitled to be prioritised for re-housing by the local authority, should she remain unable to find a suitable placement in the private sector or with a housing association. The Applicant does not have access to these supports to help her with her housing situation.

- Decision

Eviction order granted.

Right of Appeal

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a **Statement of Reasons** for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the **First-tier Tribunal for Scotland (Housing and Property Chamber)** to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a **Statement of Reasons** is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the **Statement of Reasons** is sent to them.

N. Young

Legal Member/Chair

Date: 16th December 2024