



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/24/2029

Re: Property at 154 Altyre Avenue, Glenrothes, KY7 4PZ (“the Property”)

Parties:

Mrs M Ramzan, 1 Bowen Place, Markinch, Fife, KY7 6BZ (“the Applicant”)

Miss Victoria Leitch, 154 Altyre Avenue, Glenrothes, KY7 4PZ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 2nd May 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 2nd January 2022 and a rent of £575 per month;
 - ii. Copy Notice to Leave dated 10th August 2023;
 - iii. Section 11 Notice and proof of service;
3. On 28th May 2024 the Tribunal wrote to the Applicant asking that evidence be provided in support of the Ground such as a signed statement from the family

member confirming their intention to live in the let property and their relationship with the Applicant.

4. On 3rd June 2024 the Applicant sent a letter signed by Muhammad Haseeb, confirming that he would be moving in to the property and that his uncle's wife is the owner.
5. On 27th June 2024 the Tribunal wrote to the Applicant pointing out that the family member did not appear to meet the degree of relationship required by the Act and asking for the Application to be withdrawn or representations made on why the application should be accepted.
6. On 10th July 2024 the Applicant sent an email to the Tribunal saying that she had purchased a property in Leven for her daughters but her nephew would now be moving in to it and her daughters would be moving in to the subject property and that this should meet the Tribunal's criteria.
7. On 14th August 2024 the Tribunal wrote to the Applicant requesting a signed statement or affidavit from the daughters.
8. On 23rd August 2024 the Applicant's daughters, Sara Saeed and Hana Saeed, sent a signed letter confirming that they would be moving in.
9. The Application was served on the Respondent by Sheriff Officers on 13th December 2024

Case Management Discussion

10. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented herself. There was no attendance by the Respondent or any representative on her behalf.
11. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
12. The Applicant sought an order for eviction in terms of ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the property had been the family home, and that they had moved out in 2018. The Respondent was her first tenant. The intention had always been that her twin daughters, now aged 20, would move in to the property when they were old enough to do so. This intention was the reason that the property was not sold when the Applicant and her family moved out.
13. The Applicant said that she had wanted her daughters to move in to it when they were aged 19. The Notice to leave was served on the Respondent and the

Applicant told the Tribunal that at this point, her intention was for her daughters to move into the Property. However, the Applicant's husband's nephew came to the UK around a year ago and this was 'a hiccup' as it was thought that he could move in to the property on a temporary basis, for around six months, until he had found somewhere more permanent to live. The Applicant and her husband were in the process of purchasing a property in Leven to rent out. The Applicant's husband's nephew has now moved in to that property, meaning that the Applicant can proceed with her original intention of having her daughters live in the subject property. Meanwhile, they continue to reside in the family home with the Applicant.

14. The Tribunal were satisfied that the ground had been established, and asked the Applicant to address the Tribunal on reasonableness. The Applicant said that she had limited information about the Respondent as her letting agent had dealt with everything. She knew that the Applicant is a single parent with a primary school aged daughter. The property has not been adapted in any way to aid disability. There have been some difficulties lately in gaining access to the property, particularly to have the gas safety check done. The Applicant said that she had recently, around a month ago, completed a tenancy reference for the Respondent sent by a housing association.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy in the Respondent's sole name commenced on 2nd January 2022;
- c. A Notice To Leave, dated 10th August 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 13th December 2024;
- f. The Applicant intends to allow her daughters to move in to the property once the Respondent has vacated;
- g. The Respondent is a single parent with one school aged child;
- h. The property has not been adapted in relation to any disability of the Respondent or her child.

Reasons for Decision

Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 is as follows:

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.

15. The Tribunal was satisfied that the Applicant's daughters are qualifying relatives and will be occupying the property for more than three months, and was therefore satisfied that the ground was met. The Tribunal thereafter had to be satisfied that it was reasonable to grant the eviction order.

16. The Tribunal accepted the Applicant's evidence that her daughters were going to reside in the property , and noted that there had be no attempt by the Respondent to contact the Applicant, nor had she appeared at the CMD. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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.

Alison Kelly

Alison Kelly

17 February 2025

Legal Member/Chair

Date