



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2241

Re: Property: 8 Milldown Place, Bourtreehill, Irvine, KA11 1EF (“the Property”)

Parties:

Mrs Alison Maitland, Braehead Farm, Irvine, Ayrshire, KA11 2AN (“the Applicant”),

Mrs Adele Dewet, 8 Milldown Place, Bourtreehill, Irvine, KA11 1EF (“the Respondent”)

Tribunal Members:

Sarah O'Neill (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 in favour of the Applicant against the Respondent.

Background

1. An application form was received from the Applicant on 14 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 stated that the Applicant sought recovery of the property under Ground 8 as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form was a copy Notice to Leave dated 16 February 2024 citing Ground 5 (family member intends to live in let property), and stating the date before which proceedings could not be raised to be 13 May 2024, together with proof of posting dated 16 February 2024.
3. Further to a request from the Tribunal administration, further information was received from the Applicant on or around 5 June 2024. This included:
 - i) amended application form citing ground 5

- ii) proof of delivery dated 17 February 2024 in respect of the Notice to Leave
 - iii) copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 to North Ayrshire Council, together with email acknowledging receipt
 - iv) letter from Mr Thomas Maitland, the Applicant's husband, dated 30 May 2024, stating that he gave the Applicant permission to act as landlord and bring the eviction application.
- 4. Following further requests from the Tribunal administration, various further information was received from the Applicant on 2 July, 4 August and 6 September 2024.
 - 5. The application was accepted on 22 October 2024.
 - 6. Notice of the case management discussion (CMD) scheduled for 6 February 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 23 December 2024. The Respondent was invited to submit written representations by 10 January 2025.
 - 7. An email was received from Ms Andrea Gibson of CHAP on behalf of the Respondent on 16 January 2025. Ms Gibson confirmed that she would be representing the Respondent at the CMD, and stated that the application was not opposed.

The case management discussion

- 8. The CMD was held by teleconference call on 6 February 2025. The Applicant was present and represented herself on the teleconference call. The Respondent and her representative, Ms Gibson were both present on the teleconference call.

Preliminary issue

- 9. The Tribunal noted that a copy of the tenancy agreement between the parties had not been submitted by the Applicant. The Applicant had been asked to produce this several times, but had said that she had been unable to locate it.
- 10. The Applicant advised that she had now managed to locate the tenancy agreement, which had commenced on 23 April 2018. Ms Gibson advised that the Respondent was in agreement that there was a private residential tenancy in place between the parties which commenced on that date.

The Applicant's submissions

11. The Applicant asked the Tribunal to grant an order for eviction of the Respondent.
12. In terms of ground 5, the Applicant explained that her son Mr George Maitland had previously been living in another property owned by her, which had now been sold. He therefore needed somewhere else to live and it was his intention to move into the property once the Respondent had moved out. She confirmed that it was his intention to live there for at least 3 months.

The Respondent's submissions

13. Ms Gibson told the Tribunal that the Respondent did not wish to oppose the application, and would welcome an eviction order, as she was seeking social housing for herself and her family. North Ayrshire Council was aware of the situation and had indicated that it would accommodate the Respondent once she had received an eviction order.

Findings in fact

14. The Tribunal made the following findings in fact:
 - The Applicant is the registered landlord for the property.
 - Mr Thomas Maitland, the Applicant's husband, is the owner of the property.
 - There was a private residential tenancy in place between the Applicant and the Respondent, which commenced on 23 April 2018.
 - The Applicant validly served a Notice to Leave dated 16 February 2024 citing Ground 5 on the Respondent by recorded delivery
 - The Applicant's son, George Maitland, intends to move into the property for at least three months once it is vacant.

Reasons for decision

15. 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.
16. The Tribunal first considered whether the legal requirements of ground 5, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 5 states:

Family member intends to live in property

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.

17. In terms of paragraph 4 (b), a person is a member of the landlord's family if the person is a “qualifying relative” of the landlord. Paragraph 5 (b) states that a ‘qualifying relative’ means a parent, grandparent, child, grandchild, brother or sister.

18. Paragraph 7 of Ground 5 states that 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.

19. The Tribunal noted that the Applicant's son, Mr George Maitland, was a qualifying relative of the Applicant in terms of Ground 5. The Applicant had submitted a council tax notice to demonstrate that her son had previously been living in another property which she owned. She had also submitted a copy of a qualified acceptance letter from her solicitors relating to that property stating that the date of entry would be 25 July 2024, and a statement from her son confirming that he would need to leave by that date.

20. The Applicant's son had also signed a statement dated 6 September 2024 stating his intention to reside in the property once it was vacant. The Applicant confirmed that her son intended to occupy the property as his only or principal home for at least 3 months. This was not disputed by the Respondent.

21. The Tribunal determined in light of the above evidence that Ground 5 had been established by the Applicant.

30. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. Having carefully considered the evidence and all of the circumstances, the Tribunal considered that on balance

it was reasonable to grant an eviction order. The Tribunal gave particular weight to the fact that the Respondent did not wish to oppose the application and that she anticipated that she and her family would be re-housed by North Ayrshire Council once an eviction order had been granted.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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

6 February 2025

Legal Member/Chair

Date