

Housing and Property Chamber First-tier Tribunal for Scotland



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/18/2358

Property Address: 28 Main Street, Dechmont, West Lothian EH52 6LD (“the Property”)

The Parties: Mrs Priscilla Frances Taylor, Rockview Cottage, Dechmont, West Lothian EH52 6LL (“the Applicant”)

Ms Michele Borthwick, 28 Main Street, Dechmont, West Lothian EH52 6LD (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member) and John Blackwood (Ordinary Member)

Decision

To grant an Order for eviction of the Respondent from the property at 28 Main Street, Dechmont, West Lothian EH52 6LD.

Background

An application was made by the Applicant under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The application was dated 31 August 2018.

In terms of the application the Applicant sought an order for repossession of the property at 28 Main Street, Dechmont, West Lothian EH52 6LD on the basis of grounds 3 and 5 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 being that the landlord intends to refurbish the property and that a family member intends to live in the property.

Following upon a Case Management Discussion on 9 November 2018 a direction was made requiring a copy of the Private Residential Tenancy Agreement. That was provided and the Respondent who had provided a written response indicated that they were not insisting upon any issue surrounding the competency of the Tenancy Agreement.

Prior to the hearing the Respondent sought to amend the application by including within the application a ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 namely that the landlord intends to live in the let property. Accordingly the hearing proceeded on the basis that the landlord was seeking eviction under grounds 3, 4 and 5 of the Schedule.

At the hearing on 7 February 2018 the Applicant was represented by Mr Adam Gardner, Solicitor and the Respondent by Ms Eilidh Barnes. The Applicant sought to introduce

evidence from two witnesses both who had given Affidavits in the case namely Beverley Taylor-Ewen and also Tracey Ellen Taylor. The Respondent was not present.

At the outset of the hearing there was a discussion as to the position of the Respondent. The Respondent did not consent to any order.

Thereafter the Applicant's solicitor made submissions in relation to the relative grounds. Reference was made to the two Affidavits together also with reference to documentation as provided by builders insofar as the property was concerned.

1. That a Tenancy Agreement between the Applicant and Respondent was completed and signed on 24 February 2018.
2. That the Applicant requires the property for the purpose of refurbishment. That works would be unable to be carried out without the premises being vacated.
3. That a family member intends to live in the property. The Applicant herself suffers from Alzheimer's. Power of Attorney is held by Beverley Taylor-Ewen and Debi-Lee McCulloch. The Applicant's daughter Beverley Taylor-Ewen requires to live in the property in order to be near to the Applicant to assist with her illness.
4. The Applicant herself will require to move into the property. She will then be looked after by her daughter Beverley Taylor-Ewen. Beverley Taylor-Ewen works in a neighbouring care home.

Reasons for decision

1. Evidence was given by way of Affidavit together with the other documentation from the building companies and in particular JSK Construction Services Ltd.
2. The Applicant herself suffers from Alzheimer's. She is currently living in Dechmont. Beverley Taylor-Ewen holds Power of Attorney for her mother. She lives in Bathgate. She works in Dechmont at a care home. She provides a significant amount of care for her mother. She wishes to move into the property which is adjacent to the care home to assist in the provision of that care for her mother.
3. Prior to her doing that works require to be undertaken to the property which cannot be undertaken without the property being vacated.
4. Thereafter the Applicant intends to move into the property so that she will be cared for by her daughter and be near to services.
5. Accordingly having regard to grounds 3, 4 and 5 of Schedule 3 of the 2016 Act the tribunal was satisfied that all grounds were made out and that the order for eviction would be granted in respect of all grounds.
6. The decision of the tribunal was unanimous.

Right of Appeal

A landlord, tenant or third party Applicant 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M Thorley

Signed

Chairperson

Date

M Thorley
7 February 2019