



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/22/3344

Re: Property at 40 Stewart Terrace, South Queensferry, West Lothian, EH30 9RL (“the Property”)

Parties:

Mrs Angela Hamilton-Geraghty, 15 Bennachie Way, Dunfermline, Fife, KY11 8JA (“the Applicant”)

Mrs Agata Galewska, 40 Stewart Terrace, South Queensferry, West Lothian, EH30 9RL (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

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

Introduction

1. This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. Service of the proceedings and intimation of the Case Management Discussion (CMD) took place upon the respondent by Sheriff Officers on 16 February 2023.
3. The CMD took place by teleconference on 22 March 2023 at 10.00 am. The applicant was represented by Mr Jeffrey Livingstone of Landlord Specialist Services Scotland. The applicant also joined the hearing personally. The

respondent was represented by Ms Natasha McGourt of Granton Information Centre. She did not join the hearing.

4. The application was opposed on the grounds of reasonableness. The ground relied upon for eviction was not the subject of dispute. Both parties representatives made submissions on behalf of the parties and additional information was provided directly by the applicant herself. Ms McGourt relied in part upon the written submissions she had lodged previously. She also confirmed that whilst the application was opposed that there was no objection to the tribunal making a final determination on the application at this CMD. The material facts were not in dispute.

Findings and Reasons

5. The property is 40 Stewart Terrace, South Queensferry, West Lothian EH30 9RL. The applicant is Mrs Angela Hamilton-Geraghty who is the heritable proprietor of the property and the registered landlord. The respondent is Mrs Agata Galewska who is the tenant.
6. The parties entered into a private residential tenancy in respect of the property which commenced on 21 January 2022. The rent was stipulated at £825 per calendar month.
7. The applicant relies upon ground 4 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to live in the let property. Ground 4 was originally drafted as a mandatory ground for eviction. All eviction grounds are now discretionary.
8. The standard relevant notice period under ground 4 at the time it was served was one of 84 days. However, if the tenant has been entitled to occupy the let property for not more than 6 months, the notice period is reduced to one of 28 days under section 54(3)(a) of the 2016 Act. That is the position here.
9. The notice to leave relied upon in the eviction application is valid. In terms of section 62 of the Act an additional 2 days requires to be added on to the notice period for deemed service of the notice, together with an additional one day at the end. The notice is dated 15 July 2022 and stipulates that no proceedings would be raised before 15 August 2022. It is evidenced that the notice to leave was served upon the respondent by email and accordingly the additional 2 days

for deemed service are not required. There was sufficient notice provided to the respondent. This is accepted on behalf of the respondent.

10. The applicant purchased the property in 2003. She previously resided there. She has separated from her husband and requires the let property to live in for herself. These circumstances are evidenced by a letter from W & A S Bruce Solicitors dated 8 September 2022 who act on behalf of the applicant in respect of her matrimonial affairs. She is currently residing in a property owned solely by her estranged husband. This is not the matrimonial home and she has no legal right to occupy this property. Her continued occupation of that property is delaying the resolution of the issues arising from her separation. The tribunal was satisfied that the applicant is well intentioned in seeking to secure vacant possession of the let property.
11. The tribunal was satisfied that ground 4 was established on the basis of all the available evidence. This was not the subject of opposition on behalf of the respondent. The tribunal proceeded to consider the issue of reasonableness.
12. The respondent is vulnerable. She is a single parent of two children aged 8 and 11. She is separated from her husband and has been the victim of domestic abuse. She has received support from Women's Aid. Her children attend a local primary school and the elder child will commence his secondary education in August 2023. The respondent is employed on a part time basis at the primary school but is signed off sick currently due to anxiety and depression.
13. The respondent is not in arrears of rent. This was accepted by the applicant's representative. An up to date rent statement was produced. This had no running balance and showed no clear rent due. The rent is paid by a combination of the housing element of Universal Credit and Discretionary Housing Payments which are paid directly to the applicant. These payments are always paid in arrears.
14. The applicant increased the monthly rent by service of a relevant notice in mid-August 2022. The increase in rent became effective in November 2022. The rent agreed at the commencement of the lease in January 2022 was £825 per month by around 45% to £1,200. It was submitted on behalf of the applicant that the increased rent simply reflected the market rent for a property such as the let property in the local area. This was accepted by the tribunal.

15. The applicant is an inexperienced landlord and has not adhered to all her legal obligations. Furthermore she has acted in an unpleasant and at times threatening manner. She has sent emails to the respondent demanding that she leave despite the need for a legal process to evict her. On one occasion after expiry of the notice to leave attended at the property to demand the respondent leave and return her keys. She has been found already by the tribunal (in case referenced FTS/HPC/PR/22/370) to have breached her obligations under the tenancy deposit scheme regulations. The tribunal found that the landlord / tenant relationship has broken down irretrievably. There is no ongoing trust between the parties.
16. A relevant Section 11 notice has been issued to the relevant local authority. The tribunal was satisfied that the respondent will be provided with suitable alternate accommodation in the event of an eviction order being made against her. The section 11 Notice was issued to the local authority after the lodging of the application with the tribunal but before the application was intimated to the respondent. She has already had contact with the private sector team of the local authority. There is no prejudice to the respondent in the timing of the intimation of the section 11 Notice which is both valid and effective. Furthermore the Homeless Persons (Unsuitable Accommodation) provisions apply to the respondent given her parental responsibilities.
17. Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order. The tribunal however took account of the respondent's personal circumstances and those of her children in specifying that the date upon which the order can be implemented and enforced be substantially extended beyond the standard 30 day period. The tribunal specified the date of 30 June 2023. This affords the respondent a period of more than 3 months and accords with the end of the school term. This will significantly assist the respondent. This has been a relatively short period of let. The relationship between the parties has broken down. The respondent remains capable of dealing with her housing affairs and is evidenced to be well supported in such matters. She will obtain suitable alternative accommodation for herself and her children. She will benefit from moving home to a more professionally secure tenancy.

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.

R. Mill

22 March 2022

Legal Member/Chair

Date