



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/21/0498

Re: Property at 17 Gordons Mills Place, Aberdeen, AB24 2YQ (“the Property”)

Parties:

Mr Rex Thorsson, 16 Tedder Street, Aberdeen, AB24 2SS (“the Applicant”)

Miss Kimberly Baff, 17 Gordons Mills Place, Aberdeen, AB24 2YQ (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant an Order for Possession of the property at 17 Gordons Mills Place, Aberdeen, AB24 2YQ.

ANALYSIS AND CONCLUSIONS

1. The Applicant and the Tenant entered into a Private Residential Tenancy Agreement on 14 September 2020. On 6 November 2020 the Tenant was served with a Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016, notifying her of the landlord’s intention to raise proceedings for possession under Ground 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The issue before us is whether it is reasonable to grant an Order for Possession of the property on the basis that the Applicant's son, wife and child require the property to reside in as their principal home for at least 3 months.
3. A Case Management Hearing took place on 30 April 2021. It was decided that the application would proceed to a hearing and directions were made. The Respondent has not complied with the directions and no excuse has been proffered for this failure.
4. On the 10th of June 2021, the day before the hearing, the Respondent contacted HPC Admin to ask for a postponement of today's hearing. She was advised to put the request in writing and email it. She advised that she would not be able to do so due to security issues with her email account. The Respondent was advised by HPC Admin that it would be in her best interest to attend today's hearing and put forward any request for a postponement then. HPC Admin informed the Respondent that the Tribunal would be made aware that she had called seeking a postponement and that the hearing would go ahead unless otherwise notified.
5. The hearing commenced at 10 am. The Applicant, Mr Rex Thorsson and his Representative, Mrs Brown were present. The Respondent and her supporter Mr Fraser were not. We waited until 10:10 am.
6. We had regard to the overriding objective of the Chamber as set out in Rule 2 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. This requires a tribunal to deal with the proceedings justly. Dealing with the proceedings justly includes –
 - (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
 - (b) seeking informality and flexibility in proceedings;
 - (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
 - (d) using the special expertise of the First-tier Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with the proper consideration of the issues.

7. We decided to proceed in the absence of the Respondent. We were satisfied that the Respondent had been notified of today's hearing by letter sent out on 12 May 2021. The Respondent did not make contact with HPC Admin until the day before the hearing. The Respondent has failed to respond to the Notice of Directions of 30 April 2021 and has not lodged any productions or note of defence in support of a challenge to the application. The Respondent has not informed us of any reason why she has failed to comply with the directions or any action she has taken in an attempt to comply with them. The application was made on 4 March 2021 and the Notice to Leave was properly served on 6 November 2020. We were satisfied that the Respondent has had sufficient time to put forward details of any defence to the action and to respond to directions. The Applicant and his Representative were present and ready to proceed.

8. The application before us is for an order for possession on the grounds that the Applicant requires a close family member to occupy the property. The Respondent at the Case Management Discussion had raised a question over the Tribunal's jurisdiction. We are satisfied we have jurisdiction as provided for by Section 51 of Private Housing (Tenancies) (Scotland) Act 2016 which states:

'First-tier Tribunal's power to issue an eviction order

(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2)The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3)The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4)An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.'

9. We are satisfied that the Applicant has served a valid notice, as evidenced by the Certificate of Service, executed by Sheriff Officers on 6 November 2020.

10. We heard from Mr Thorsson. He stated that he is the owner and landlord of the property. He asks the tribunal to grant an order for eviction to allow his son, wife and child to occupy the property on a permanent basis. They were living in the USA and returned in January 2021. They are currently living in a one bedroomed property owned by him. The accommodation is overcrowded and not suitable for the family. His son has 2 children to a prior relationship and he sees them every alternative weekend.

11. An Affidavit has been produced by the Applicant's son, Sigfrid Alfi Vidkun Thorsson. In that Affidavit he declares that he has returned from living in America with his family to reside in Aberdeen on 14 January 2021. He declares that he and his wife are currently residing in a temporary one-bedroom flat in Aberdeen which is not suitable for the family's needs. He declares that he intends to reside in the property as his principal home and on a permanent basis.
12. We considered the Affidavit by Luis Bonaccorso, which was sworn on the 21 May 2021 in the presence of Ryan Mackay, Solicitor, Aberdeen. This was served on the Respondent. Of relevance to the order sought, Mr Bonaccorso declares that he resides in the flat upstairs from the Respondent and shares the same entrance to the building. He declares that the Respondent is rarely at the flat and that he does not believe that she lives there. She has attached a padlock to the outside of the flat door and is almost never there. He is aware of her being there maybe once a week and usually only for a few hours.
13. The Respondent has previously taken part in the Case Management Discussion. However, the Respondent has failed to respond to directions and has not lodged any documentation or note of defence to the application to evict. There has been no challenge to the Applicant's position that he requires the property for his son and his family or that the Respondent is rarely at the property. We are not aware of any reason that would make the granting of the order unreasonable.
14. Having considered all of the information, individually and in the round, we are satisfied that the Applicant requires to use the property to accommodate his son and his family. We are satisfied that he and intends to occupy the property as his principal home and on a permanent basis and that the property that his son is currently occupying is not suitable for his needs.
15. We are satisfied that it is reasonable to grant the Order as the Respondent received notice on 6 November 2020 of the Applicant's intention to raise proceedings. The application was made in March 2021. The Respondent has had sufficient time to secure alternative accommodation, has not challenged the Applicant's position that he requires the property for his son, has not notified of any reasonable defence to the application and has not disputed the declaration by Luis Bonaccorso that she does not reside at the property most of the time. Accordingly, we grant the Order for Possession.

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.

Lesley-Anne Mulholland

Legal Member/Chair

11 June 2021

Date