

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/20/1403

Re: Property at 49 Rannoch Drive, Bearsden, Glasgow, G61 2LF (“the Property”)

Parties:

Mr Robert Gil, 2/1, 310 North Woodside Road, Glasgow, G20 6LX (“the Applicant”)

Mr Joseph McKnight, 49 Rannoch Drive, Bearsden, Glasgow, G61 2LF (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondent for possession of the Property at 49 Rannoch Drive, Bearsden, Glasgow, G61 2LF under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 23 June 2020, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland

Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

- 2 The application was accompanied by a copy of a Private Residential Tenancy between the parties signed and dated 1 July 2019, a Notice to Leave dated 23 March 2020 and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to the East Dunbartonshire Council dated 22 June 2020.
- 3 On 9 September 2020, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
- 4 On 21 September 2020, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 20 October 2020. The Respondent required to lodge written submissions by 12 October 2020. This paperwork was served on the Respondent by David A.Orr, Sheriff Officer, Motherwell on 21 September 2020 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

- 5 The Tribunal proceeded with the Case Management Discussion on 20 October 2020 by way of teleconference. The Applicant was in attendance and represented himself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
- 6 The Tribunal had before it the Private Residential Tenancy between the parties signed and dated 1 July 2019, a Notice to Leave dated 23 March 2020, a signed Oath by the Applicant sworn before Colin Adam, Solicitor dated 26 August 2020, and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to the East Dunbartonshire Council dated 22 June 2020.
- 7 The Tribunal pointed out to the Applicant that the Notice to Leave had been dated 23 March 2019. The Applicant explained that this had been a mistake and that the Notice was actually signed and dated by him on 23 March 2020. He explained that he had tried to employ Sheriff Officers to serve the Notice for him but due to the COVID 19 pandemic, none were able to assist.

Accordingly the Applicant personally delivered the Notice to Leave through the letterbox at the Property on 23 March 2020 and also arranged for a friend to send a copy of the Notice to Leave by recorded delivery post on 3 April 2020.

- 8 The Applicant explained that he wanted to move into the property for health reasons. He explained to the Tribunal that he had chronic osteoarthritis and had undergone a replacement of the left hip in March 2019. He had been due to have his right hip replaced in April/May 2020, but this had been postponed due to the COVID 19 pandemic. He was also waiting other surgery to his shoulders and explained that his condition was debilitating and getting worse. He was staying at a friend's property which had stairs which he could not manage; the bathroom was unsuitable for his needs. He explained he needed the Property to live in as it had no stairs and that he could easily modify the bathroom to suit his needs. He is classed as disabled and has a blue badge for his car. He hoped his son would be able to live with him whilst he recovered from his hip operation. The Property had 4 bedrooms

- 9 The Tribunal noted the terms of the Oath sworn by the Applicant before Colin Adam, Solicitor and the Notice to Leave under Section 50(1) and Ground 4 of Schedule 3 of the 2016 Act dated 23 March 2020 addressed to the Respondent. The Tribunal also noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the East Dunbartonshire Council on 22 June 2020.

Findings in Fact

- 10 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 1 July 2019 in relation to the Property.

- 11 The Applicant suffers from chronic osteoarthritis which is debilitating. He is disabled. His current accommodation is not suitable for him. The bathroom is not suitable for his needs. The Applicant is unable to manage stairs.

- 12 The Property comprises 4 bedrooms and has no stairs. The bathroom could be easily modified to suit the Applicant's needs. The Applicant would like to live in the Property. The Applicant swore an Oath before Colin Adam, solicitor on 26 August 2020 that he intended to live in the Property.

- 13 The Applicant served a Notice to Leave under Ground 4 of Schedule 3 of the 2016 Act on the Respondent on 23 March 2020 requiring him to leave the Property by 16 June 2020. The Respondent continues to live in the Property.

14 A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on East Dunbartonshire Council on 22 June 2020.

Reasons for Decision

15 The Tribunal was satisfied on the basis of the oral submissions made by the Applicant and on the basis of the Oath made before Colin Adam, solicitor that the Applicant intended to live at the Property. The Tribunal formed the view that the Applicant had little choice but to seek the return of the Property for his own use due to his disability. The Applicant made very clear submissions to the Tribunal about his health condition, how that was worsening and extremely debilitating and why he wanted to move into the Property. The Tribunal found the Applicant to be credible. In the circumstances, the Notice to Leave having been served and the appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 also having been served, the Applicant is entitled to repossess the Property under Section 51 and Ground 4 of Schedule 3 of the 2016 Act.

Decision

16 The Tribunal granted an order for repossession 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.

S. Evans

20 October 2020

Legal Member

Date