



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/20/2261

Re: Property at 38 Fairisle Place, Lossiemouth, Morayshire, IV31 6RN (“the Property”)

Parties:

Ms Kateriona Bayliss, 31A North Bridge, Bathgate, West Lothian, EH48 4PJ (“the Applicant”)

Iona Stewart, Mr Conor Stewart, 38 Fairisle Place, Lossiemouth, Morayshire, IV31 6RN (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 27th October 2020 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondents, and provided with her application copies of the private residential tenancy agreement, notice to leave, section 11 notice, relevant executions of service, and a sworn affidavit from a family member.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the

Coronavirus (Scotland) Act 2020, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 11th December 2020, and the Tribunal was provided with the executions of service.

Hearing

A Hearing was held at 10.00 on 20th January 2021 by Tele-Conference. The Applicant participated, and was accompanied by her father, Mr Gault, as a supporter. The Applicant was represented by Mr Runciman, solicitor. The Respondents did not participate, nor were they represented. The Respondents have not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr Runciman with reference to the application and papers to grant the order sought on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 2nd July 2020 relied on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that a member of the Applicant's family intends to live in the Property.

The Applicant had provided a sworn affidavit from her brother explaining that he intends to live in the Property as it is more suitable for him and his wife, the latter of whom suffers from a health condition which he explains in the affidavit. Their current accommodation is unsuitable for his wife's condition due to her having to climb and descend stairs, whereas the Property has a downstairs bathroom with toilet and a downstairs dining room, the latter of which could be used as a bedroom.

Further, the landlord of the property in which the Applicant's brother and his wife currently reside is in the process of selling it, and they are likely to need to remove in the near future.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

Paragraph 5 of Schedule 3 to the Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property. The Tribunal may find that this ground applies if (1) 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 (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact. Paragraph 5 provides that a brother of the landlord is a qualifying relative.

The Tribunal is satisfied that ground 5 has been established. The landlord's brother intends to occupy the Property with his wife as his only home for at least 3 months, and *prima facie* the Applicant has made out that it is reasonable to issue an eviction order on account of that fact.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondents have not responded to this application at any stage either in writing or by any other form of communication, and have not participated in the Hearing, The Respondents have put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

In those circumstances, having considered the whole circumstances, the Tribunal is satisfied that it is reasonable to issue an eviction order.

Decision

In these circumstances, the Tribunal will make an eviction order against the Respondents in this application.

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.

Neil Kinnear

Neil Kinnear
Legal Member/Chair

20 January 2021
Date