



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

Chamber Ref: FTS/HPC/EV/21/1194

Property at 15 Avonbridge Drive, Hamilton, ML3 7EG (“the Property”)

Parties:

Scott McGoldrick, Nicola McGoldrick. 8 Old Mill Lane, Uddingston, G71 7PD (“the Applicant”)

Lorna Baird, 15 Avonbridge Drive, Hamilton, ML3 7EG (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Liz Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicants.

Background

1. By application dated 17 May 2021, the Applicants seek an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy tenancy agreement, Notice to Leave with photograph showing delivery, letter from the Applicant and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. The application is based on ground 5 of schedule 3, a member of the landlord’s family intends to live in the let property.
2. The application was served on the Respondent by Sheriff Officer on 28 June 2021. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case conference on 3 August 2021 at 11.30 am

and that they were required to participate.

3. The CMD took place on 3 August 2021 at 11.30 am. The Second named Applicant participated and both Applicants were represented by Mr Law. The Respondent did not participate and was not represented.

Case Management Discussion

4. Mrs McGoldrick advised the Tribunal that she is not aware of the reason for the Respondent's failure to participate in the CMD but that she remains in occupation of the property. She advised that the Notice to Leave was hand delivered to the Respondent personally by both Applicants, at the property. The Respondent had opened the door but kept the chain on. She referred the Tribunal to the photograph taken of the Notice being handed to the Respondent and confirmed that this was on 11 January 2021. Mrs McGoldrick told the Tribunal that the Respondent indicated that she would vacate the property at the end of the notice period. She asked for assistance in finding alternative accommodation. Mrs McGoldrick has sent details of a number of properties in the same area and with a similar level of rent. She initially indicated that some were not suitable and thereafter advised that she was not prepared to incur the cost of travelling to view the properties. Mrs McGoldrick also advised the Tribunal that the Respondent has sometimes been difficult about providing access to the property when this is required for gas safety checks and other inspections.
5. Mrs McGoldrick advised the Tribunal that her brother-in law Ryan McGoldrick (the First Applicant's brother) moved out of his previous accommodation at Christmas, following a relationship breakdown. She offered to let him move into the property but explained that she would have to serve notice on the tenant, and this would take a few months. Since Christmas, Mr Ryan McGoldrick has been homeless and has had to spend time with various friends and relatives. This has affected his mental health as he really needs a settled home. The Tribunal was advised that he is in employment and could have sought a private let but has not done so because he intends to live in the let property when it becomes free. He will be living there alone.
6. The Tribunal were also advised that the property is a three bedroom flat. The Respondent resides there with two adult daughters. She is understood to be in employment and has no health issues, to the best of the Applicant's knowledge. She has recently incurred rent arrears, although only in the last few months. There have been some recent complaints from other residents about refuse being discarded on the common stairway and she has had a pet dog at the property, although no pets are allowed.

Findings in Fact

7. The Applicants are the owners and landlords of the property.

8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The First Applicant's brother intends to live at the property for at least three months.

Reasons for Decision

10. The tenancy is a private residential tenancy which started on 12 February 2019. The application to the Tribunal was submitted with a Notice to Leave dated 11 January 2021. The Applicant also submitted a photograph showing an envelope being handed to someone at a door and advised the Tribunal that the photograph is of the Notice being hand delivered to the Respondent on 11 January 2021. The Notice states that an application to the Tribunal is to be made on ground 5, the landlord's family member intends to live in the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 12 April 2021. The application to the Tribunal was made after expiry of the notice period. The Legal Member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
11. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 5 of Schedule 3 states "(1) It is an eviction ground that a member of the landlord's family intends to live in the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) 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 (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact." Paragraph 5(4)(b) states that a person is a member of a landlord's family if they are a qualifying relative of the landlord. Paragraph 5(5)(b) stipulates that qualifying relative includes a brother of the landlord
12. The Respondent did not participate in the CMD and did not lodge any written representations which dispute the information provided by the Applicant. From the application and the information provided by the Applicant at the CMD, the Tribunal is satisfied that the First Applicant's brother is currently homeless and intends to occupy the property as his only or principal home for at least three months. As the Respondent did not participate, no information was provided by her in relation to the issue of reasonableness. However, the Tribunal notes that she is understood to be in employment, has no dependent children residing with her and has indicated an ability to seek alternative accommodation. The Tribunal also notes that she was served with the Notice to Leave in January 2021, and therefore has had 7 months to source alternative accommodation. In the circumstances, the Tribunal is satisfied that it would be reasonable to

grant an eviction order.

13. As the Applicant has complied with the requirements of the 2016 Act, and as the eviction ground has been established, the Tribunal determines that an eviction order should be granted.

Decision

14. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

J. B

Josephine Bonnar, Legal Member

Date: 3 August 2021