



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/21/1586

Re: Property at 31 Hillside Drive, Blackridge, EH48 3SL (“the Property”)

Parties:

Ms Saj Sharif, 19 Hoseasons Gardens, Edinburgh, EH4 7EY (“the Applicant”)

Ms Amanda Jane Gordon, 31 Hillside Drive, Blackridge, EH48 3SL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be made.

The Applicant lodged an application on the 1st July 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under Ground 5 of Schedule 3 of Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were:-

1. The Tenancy Agreement showing a start date of 19th April 2019
2. Notice to Leave
3. Section 11 Notice
4. Emails between Applicant and Letting Agent

The application was served on the Respondent by Sheriff Officer on 12th August 2021.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Orr of Martin & Co. The Respondent represented herself.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules.

The Applicant’s Representative confirmed that she was seeking an eviction order. She confirmed that, as per the documents lodged with the Tribunal, the Applicant’s 30-year-old son was going to move in to the property. A Notice to Leave had previously been served but had not proceeded to a Tribunal application due to it not being safe for either the Applicant’s son or the Respondent to move due to the pandemic.

The Respondent said that she wanted to move out of the house and was not opposing the order. She had accommodation to move to as long as she received a reference from the letting agent. Miss Orr confirmed that there would be no reason why a reference would not be forthcoming.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement had a commencement date of 19th April 2019;
3. A Notice to Leave was served on the Respondent;
4. The Applicant’s 30 year old son intended to move in to the property when the Respondent vacated and occupy it as his only or principal home for at least three months.

Reasons for Decision

Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 states:

Family member intends to live in property

5(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.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

The Tribunal were satisfied that the Applicant's son intended to live in the property as his only or principal home for at least three months, and according the ground was met.

The Tribunal then had to consider if it was reasonable to grant the order. Given that the Respondent did not oppose the order, wanted to move out, and had secured alternative accommodation, the Tribunal were satisfied that it was reasonable.

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.

Alison Kelly

13 September 2021

Legal Member/Chair

Date