



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/21/1691

Re: Property at 124 Curtis Avenue, Kings Park, Glasgow, G44 4NP (“the Property”)

Parties:

Mr Ross Martin, 9 Kinmount Avenue, Glasgow, G44 4RR (“the Applicant”)

Miss Kelly O'Neill, 124 Curtis Avenue, Kings Park, Glasgow, G44 4NP (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

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

Background

This Applicant seeks an Eviction Order in respect of Grounds 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”) in that it is claimed that the Applicant’s father intends to live in the Property. The Application is accompanied by a copy of the tenancy, the Notice served on the Council in respect of s 11 of the Homelessness Etc. (Scotland) Act 2003, the Notice to Leave and the email sending the Notice to Leave together with an affidavit from the Applicant.

The substance of the Application is that the Applicant states that his father is in poor health following on from a stroke and the Applicant wishes for his father to live in the Property which is said to be very close to where the Applicant himself lives.

The Case Management Discussion

The Application called for a Case Management Discussion by conference call at 10 am on 9 September 2021. The Application called alongside the related Application of FTS/HPC/CV/21/1692 which concerned a Payment Order for alleged rent arrears between the parties. The Applicant was represented by Ms McCracken of Bannatyne Kirkwood France & Co and the Respondent was represented by Mr Gordon of Shelter Scotland.

Mr Gordon acknowledged that there was no dispute that the Applicant genuinely did wish for his sick father to live in the Property to be closer to him. In that regard the Grounds was not contested. Mr Gordon advised that the defence to the Application was that it was not reasonable for the Application to be granted. The factors which Mr Gordon invited the Tribunal to take into account in considering it unreasonable to grant the Application were that the Applicant had lived in the Property since 2013, she had no alternate accommodation and that the Applicant did not wish to be considered intentionally homeless.

On enquiry with Mr Gordon it was stated that the Respondent was financially dependent on state benefits and lived in the Property with her sons who were aged 24 and 14.

The Tribunal considered all the aspects of the case and the documentation and discussed these fully with Ms McCracken and Mr Gordon. The Tribunal ensured that it had as much information as was necessary to consider the issue of the reasonableness or otherwise of the Application.

The Tribunal discounted the alleged rent arrears claimed in the related Application for a Payment Order as being in any way a relevant factor. These alleged rent arrears were contested and no substantive decision was made about whether in fact any rent was lawfully due.

The Tribunal purely considered the defence put forward by Mr Gordon and balanced this with the wishes of the Applicant to have his sick father live closer to him.

Findings in Fact

Having heard from the Representatives and having considered the Application, The Tribunal made the following findings in fact.

- I. *The parties entered into a Private Residential Tenancy which commenced on 1 May 2019;*
- II. *The Applicant was the landlord and the Respondent was the tenant under that tenancy agreement;*
- III. *The Applicant validly served a Notice to Leave on the Respondent by email on 1 April 2021;*
- IV. *The Grounds relied upon in that Notice to Leave was Grounds 5 of Schedule 3 of the Act;*
- V. *The Applicant genuinely wishes for his father, who is in poor health, to live in the Property to be closer to the Applicant who is his only child;*
- VI. *The Applicant has lived in the Property since 2013;*
- VII. *The Applicant lives in the Property with two sons who are aged 24 and 14;*
- VIII. *The Applicant does not currently have any alternate accommodation;*
- IX. *The Applicant has complied with all legal obligations in respect of bringing this Application including providing notice to the local authority under s11 of the Homelessness (etc) (Scotland) Act 2003;*
- X. *It is reasonable for the Application to be granted.*

Decision

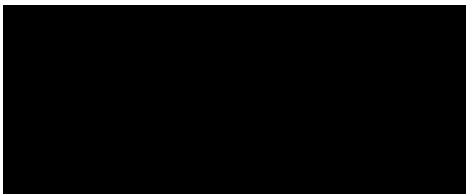
Having made the above findings in fact, the Tribunal considered that it had a sufficient basis to make a decision. In assessing the reasonableness of granting the Application, The Tribunal weighed the interests of the Applicant against those of the Respondent. The Tribunal decided that such an order should be made today as the matters put forward as to why it was not reasonable to grant the Application would have no prospect of success at a Hearing. There was no merit in delaying the decision to a later date when the Tribunal felt that it had all the relevant information before it today.

Mr Gordon had also candidly acknowledged that, as he was opposing the Application today, should an order be granted then the Respondent could not be said to have made herself intentionally homeless. The Tribunal could not consider the Respondent's defence to the Application to be sufficient to delay making the order sought today.

Grounds 5 of Schedule 3 is engaged and it is reasonable to grant the Eviction Order. The Tribunal therefore granted the Application and made the Eviction Order.

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.



9 September 2021

Legal Member/Chair

Date