



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/21/2069

Re: Property at 17 Robson Street, Dundee, DD4 7JQ (“the Property”)

Parties:

Ms Michelle Collins, c/o 23 Callendar Gardens, Dundee, DD4 6BP (“the Applicant”)

Mrs Shetha Al Safar, 17 Robson Street, Dundee, DD4 7JQ (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Jane Heppenstall (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 Applicant.

Background

1. By application dated 25 August 2021, the Applicant seeks an eviction order. A copy private residential tenancy agreement, Notice to leave, email to the Respondent with the notice to leave attached, section 11 notice and email from the Applicant to her letting agent were lodged in support of the application.
2. A copy of the application was served on the Respondent by Sheriff Officer on 22 September 2021. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 26 October 2021 at 10am and that they were required to participate. They were provided with the telephone number and passcode. Prior to the CMD the Applicant’s representative lodged a copy of death certificate for the joint owner of the property and confirmed that the Applicant would be represented by Mr White and Mr Goodman at the CMD.

3. The CMD took place on 26 October 2021. Neither party participated. The Tribunal determined that the application should proceed to a further CMD. The parties were notified that a further CMD would take place by telephone conference call on 10 December 2021 at 10am, and they were required to participate.
4. The CMD took place on 10 December 2021 at 10am. The Applicant participated was represented by Mr White and Mr Goodman (“the representatives”). The Respondent did not participate and was not represented. She did not contact the Tribunal prior to the CMD, or lodge written representations.

Case Management Discussion

5. The representatives advised the Tribunal that they had failed to participate in the previous CMD as they had been given the wrong time. They attempted to dial in at 11am, but the CMD was over. They confirmed that the Respondent and her family are still in occupation of the property. Although the Applicant’s plans were fully explained in November 2020, and the Respondent provided with details of alternative properties, the Respondent has failed to move out of the property. The representatives confirmed that Ms Collins notified them in November 2020 that she wanted to move back into the property. She had returned from Australia following the death of her husband. The representatives contacted the Respondent’s husband as he has always been their main point of contact. They hoped that the Respondent would move out voluntarily and allowed time for this to be arranged before starting the Tribunal process. They allowed extra time because of the pandemic and provided the Respondent with details of other suitable properties, without success. Following service of the notice to leave they also continued to contact the Respondent with details of alternative properties. In response to questions from the Tribunal, the representatives confirmed that the Respondent’s husband has better English and has been their main point of contact as a result. However, there is no doubt that the Respondent fully understands the action which has been taken and has also had the benefit of legal advice. The representatives also advised the Tribunal that the Respondent asked to be paid the sum of £12000 to vacate the property as she had spent money on improvements. The request was refused as no evidence was provided of the expenditure and no works had been authorised by the Applicant.
6. Ms Collins advised the Tribunal that she has been staying with family since her return from Australia in November 2020. She is effectively homeless and is sleeping on a sofa in her mother’s house. The property is the former family home, purchased 20 years ago. She and her husband resided there until they re-located to Australia in 2010. Since then, the property has been rented out. It is her intention to move back into the property and live there permanently. Her daughter and partner, currently living in rented accommodation, will also move into the property with her. Ms Collins confirmed that she does not own any other property which would be available for occupation by her.

7. The representatives advised the Tribunal that the Respondent resides at the property with her husband and children. They are unable to confirm how many children or their ages. They are not aware of any health issues or disabilities affecting the household. The rent is paid direct by Housing benefit. There is a shortfall which the Respondent pays. This is sometimes late but there are no significant arrears and no other issues with the tenancy. The only issue has been the request for compensation for alleged unauthorised work to the property.

Findings in Fact

8. The Applicant is the owner and landlord of the property.
9. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
10. The Applicant intends to live at the property on a permanent basis

Reasons for Decision

11. The tenancy is a private residential tenancy which started on 19 June 2019. The application to the Tribunal was submitted with a Notice to leave and a copy of an email to the Respondent dated 14 May 2021. This establishes that the Notice was sent to the Respondent on this date. The Notice states that an application to the Tribunal is to be made on ground 4, the landlord 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 19 August 2021. The application to the Tribunal was made after expiry of the notice period. The Tribunal 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. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
12. 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 4 of Schedule 3 (as amended by the 2020 Act) states "(1) It is an eviction ground that the landlord intends to live in the let property. (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if (a) the landlord intends to occupy the let property as the landlords 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."
13. 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 at the CMD, the Tribunal is satisfied that the Applicant intends to occupy the property as her principal home

with her daughter and her daughter's partner. They intend to live there permanently. The Tribunal is therefore satisfied that the Applicant intends to occupy the let property as her only or principal home for at least three months.

14. The Applicant and her representatives were unable to provide the Tribunal with much information about the Respondent's circumstances and the Respondent chose not to do so. The Tribunal notes that she occupies the property with her husband and children. Most of the rent is paid by Housing Benefit or Universal Credit. Although sometimes late, the shortfall between the rent charge and the benefit is paid by the Respondent. The only significant issue which has occurred during the tenancy is the possibility of unauthorised alterations. The Tribunal notes that the Respondent was given several months to find alternative accommodation before the Notice to leave was served and that the Applicant's representatives have endeavoured to assist her by providing information about other properties. The Respondent has been aware of the Applicant's intention to move back to the property for over a year and has either declined or failed to obtain alternative accommodation.
15. The Tribunal notes that the Applicant is currently homeless, sleeping on a sofa in a relative's home. She has no other accommodation available to her. The property is the former family home, occupied by the Applicant for many years before her move to Australia. She now requires the property to live in with her daughter and partner, who rent their current accommodation. In the circumstances, having regard to the Applicant's circumstances and the limited information available about the Respondent, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.
16. The Tribunal is satisfied that the eviction ground has been established and that it would be reasonable to grant the order.

Decision

17. 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.



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