



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 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/21/2124

Re: Property at 22 George Street, Motherwell, ML1 2QG (“the Property”)

Parties:

Mrs Alex Black, 37 Orchard Street, Motherwell, ML1 3JE (“the Applicant”)

Miss Donna Harrison, 22 George Street, Motherwell, ML1 2QG (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal also supersedes Extract for a period of 8 weeks.

Introduction

This Hearing concerned an Application for Eviction in relation to a Private Residential Tenancy under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by teleconference due to the covid-19 pandemic.

1. Attendance and Representation

The Applicant attended personally. Lesley Martin, Hemmings Homes, attended as representative for the Applicant.

The Respondent was not present. There had been no communication from the Respondent to the Tribunal or the Applicant. The Applicant's representative said she was aware the Respondent was still in the property, she had been into her office in regards rent and to view properties for sale as she said her ex partner and father to her children may be trying to source alternative accommodation for her.

2. Preliminary Matters

The Tribunal noted that the Applicant had lodged an email with the Tribunal stating her mother had sadly died since the last hearing and that she now wished to move into the property on her own as her principle home.

There were no other preliminary issues raised.

3. Background

a)The application called previously before the Tribunal as a Case Management Discussion. The Applicant was not present but represented and the Respondent was present.

b)The Applicant's representative set out that the Applicant seeks possession as she plans to move back into the property with her elderly mother. She said that the Applicant has her own property just now, is in her late 50's and is looking to move her mum out of a nursing home to live with her in the property. The Applicant's representative said that the Applicant was going to rent out her own home and move back into the property. She could not provide further information.

c)The Respondent said that she was a single mum staying in the property with two young children, who were 4 years and 9 years of age. She said that they had lived in Motherwell for around 6 years. She said she was settled in the area and property but she had accepted she could not live there long term. The property she said does not have enough space and she shares her bedroom with her 4 year old son. The Respondent said she had asked for a house from the local authority and had made an application for housing in July 2021. The Respondent said she had nowhere to go, she had no family to stay with and the school her child goes to is 3 mins from the property. The Respondent said she had also made efforts to clear her furniture from the property so that she is ready to leave when she can get alternative housing. The Respondent last spoke to her housing office in regards her application yesterday when she went to the Bellshill office.

d)The Tribunal considered although the Applicant's representative gave oral evidence of the reasons for the Applicant requiring to move back to the property there was insufficient evidence and a Hearing would allow this to be addressed.

4. The Hearing – Summary of Evidence

The Applicant

a) The Applicant set out that she was a teacher, was 57 years of age and she sought eviction as she said she needs the house back. She confirmed that she initially sought to live in the property as accommodation for her and her elderly mother to stay. However as her mother had recently passed she now needs to recover the property for her to stay in as her principal home.

b) The Applicant said that she has another property which she rents and which is in the same area as the property. The applicant said she had been living in Motherwell in her mother's house looking after at 37 Orchard Street. She said the decision to move into the property had been made as the property was on one level with a downstairs toilet as her mother had been using a commode in her bedroom and unable to use the home fully. She said her mother's home does not have central heating which is another reason to move to the property.

c) The Applicant said that she had bought the property to eventually move into it as her own home. Her other property had been ruled out as it was an upstairs flat. She said her late mother's home would be sold, she has 2 brothers and she is her late mother's executor. The house she said was a 4 bedroom house that was not practicable for her.

The Applicant's Representative

a) The Applicant's representative set out her evidence provided orally last time that the Applicant's mother was in a nursing home was a mistake and it may have been as the Applicant's mother was in hospital. She said she hadn't heard anything further from the Respondent.

b) The Applicant's representative said that the Respondent had paid rent and that she had accompanied her to a couple of house viewings for sale. She said the Respondent advised that the children's father had an agreement in principle for a mortgage and was looking to assist her finding accommodation. She took her to 2 property viewings and they were not in the same catchment area.

5. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent. The Respondent had been present at the CMD. The Tribunal had intimated the date to the Respondent and the Applicant had lodged a further email which had been sent to the Respondent in advance of the Hearing. It was in the interests of the parties having regard to the Overriding objective to proceed.**
- 2. The Applicant sought an Order for Eviction on ground 4 that she intended to reside in the property as her principal home.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**

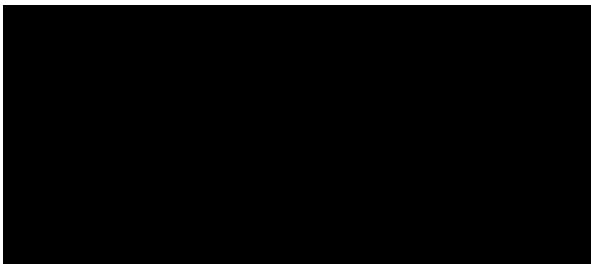
4. There was a PRT in place between parties dated 15th October 2020. A Notice to Leave was sent to the Respondent on 5th March 2021.
5. The Tribunal was satisfied on balance that the Applicants in terms of Schedule 3, Part 1 Ground 4 of the 2016 Act that the Applicant intends to live in the property. The Tribunal was in receipt of a letter of intent and the Applicant's credible oral evidence given to the Hearing on 3rd February 2022.
6. Further the Tribunal was satisfied on a balance that it was reasonable that an Order for Eviction be granted. The Tribunal balanced the Applicant's circumstances alongside the Respondent's circumstances as she had narrated and which was noted in the previous Case Management Discussion note.
7. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.
8. The Tribunal in terms of the overriding objective, interest of justice and balances the interest of both parties in particular as it was a matter of knowledge that the Respondent lived in the property with school aged children determined extract should be superseded for a period of 8 weeks to allow further time for the Respondent to source alternative accommodation.

6. Reasons for Decision in Absence.

The Tribunal heard credible and reliable evidence from the Applicant together the written application which narrated the position of the Applicant in terms of securing the property to reside in now alone as her principle home. The written evidence supported the credible evidence of the Applicant. The Tribunal did, although the decision was made in absence, consider the position of the Respondent as previously noted at the CMD. Accordingly the Tribunal considered a supersession of decree was appropriate in all the circumstances.

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.



3rd February 2022

Legal Member/Chair

Date