



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/22/0415

Re: Property at 1 Sutherland Crescent, Bathgate, West Lothian, EH48 1EB (“the Property”)

Parties:

Mr James Stein McDonald, 2 Balgrochan Terrace, Bathgate, West Lothian, EH48 1BN (“the Applicant”)

Ms Esther Abiola Idowu, 1 Sutherland Crescent, Bathgate, West Lothian, EH48 1EB (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 1 Sutherland Crescent, Bathgate, West Lothian, EH48 1EB under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 11 February 2022, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)**

Regulations 2017 (“the Regulations”). The basis of the Application was that the Applicant required the Property for a family member to live in under Ground 5 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement date 8 June 2018 between the parties, a Notice to Leave and accompanying letter dated 23 September 2021 with a Recorded Delivery slip, a sworn Affidavit from the Applicant dated 7 January 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council dated 7 January 2022.
3. On 28 February 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 21 March 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 9 May 2022. The Respondent required to lodge written submissions by 11 April 2022. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 22 March 2022 and the Execution of Service was received by the Tribunal administration.
5. On 28 April 2022 the Tribunal received a further sworn Affidavit dated 26 April 2022 from the Applicant’s granddaughter Kaysha McDonald which was added to the Application papers.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion on 9 May 2022 by way of teleconference. The Applicant was represented by Mr Lewis Brian from Messrs Sneddon Morrison, solicitors. The Respondent Ms Idowu appeared on her own behalf.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 8 June 2018 between the parties, a Notice to Leave and letter dated 23 September 2021 with a Recorded Delivery slip, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council dated 7 January 2022 and sworn Affidavits from the Applicant and his granddaughter Kaysha McDonald. The Tribunal noted the terms of these documents and in particular the Affidavits which set out that the Applicant needed possession of the Property for his granddaughter to move into with her baby son and her partner; she currently lived with the Applicant’s son and daughter in law but since the birth of her son in September 2021 the family were tight on space.
8. Mr Brian moved the Tribunal to grant an Order for repossession. The Tribunal noted the Notice to Leave dated 23 September 2021 which relied on Ground 5 of Schedule 3 of the 2016 Act. He advised that it was the Applicant’s

intention to move his granddaughter into the Property. She lived with the Applicant's son and daughter in law, her parents and since the birth of her son, the family were tight on space. It had always been the intention of the family that his granddaughter would move into the Property. This was reflected in the sworn Affidavits.

9. In response Ms Idowu's position was that the Applicant was entitled to have the Property back. Her personal circumstances were such that she was in a catch 22 situation. West Lothian Council were fully aware of her family's circumstances. She explained she was a single parent with three children aged 25, 22 and 13. Her eldest child was working. Her 22 year old daughter had special needs and was not able to walk. Her 13 year old son was on the spectrum. The Council had advised her that she had to wait for the outcome of the Tribunal's decision and unless the Order was granted there was no assistance the Council could give.

Findings in Fact

10. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 8 June 2018 in relation to the Property.
11. The Applicant owns the Property. The Applicant intends to allow his granddaughter Kaysha McDonald, her baby son and her partner to move into the Property. His granddaughter currently resides with the Applicant's son and daughter in law but since the birth of her son in September 2021 space is tight. The Applicant's family always had the intention that the Property would be for his granddaughter.
12. The Applicant served a Notice to Leave on the Respondent 23 September 2021. The Notice to Leave was served by Recorded Delivery. The Notice to Leave required the Applicant to leave the Property by 1 January 2022. The Notice to Leave relied on ground 5(Family member intends to live in the Property) of Schedule 3 to the 2016 Act.
13. The Respondent is a single person who lives in the Property with her three children, one of whom has special needs and the other medical needs as she is unable to walk. Her adult daughter works.
14. The Applicant requires the Property for his granddaughter and her family to live in. The Respondent accepts the Applicant is entitled to repossession.
15. The Respondent's family circumstances are known to West Lothian Council.

16. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on West Lothian Council on 7 January 2022.

Reasons for Decision

17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 5, namely a family member intend to live in the Property. Ground 5 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to move a family member move into the Property at Part 2 of the Notice in terms of Ground 5 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2)(c)(iii).

20. The application is based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 1 and 2. In terms of Section 54 (2)(c)(ii) the notice period of the Notice to Leave is three months.

21. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. Section 64(5) assumes a tenant will receive the Notice to Leave 48 hours after it is sent. In this case the Notice to Leave was served by Recorded Delivery post on 23 September 2021. The Tribunal noted the terms of clause 51 of the tenancy agreement that the address for a Notice was permitted on the Respondent at the Property. The Recorded Delivery receipt was included with the application.

22. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 1 January 2022. The application was made on 11 February 2022. In the circumstances the Tribunal is satisfied the Respondent has been

given more than sufficient notice of three months in terms of the 2016 Act. Accordingly the Notice to Leave complies with Section 62.

23. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely ground 5.
24. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by both parties. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Brian that the factual basis of the application had been established and was satisfied the Applicant intended to allow his granddaughter to live in the Property.
25. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to move a family member into the Property when he obtained possession of it. The Respondent was working with West Lothian Council with a view to securing accommodation for her and her family. The Council were aware of the special and specific needs of the family. The Order was needed to allow the Respondent to move forward with the Council. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
26. In the circumstances the Tribunal considered that in terms of Ground 5 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

25. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

Legal Chair

9 May 2022

Date