



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/22/0416

Re: Property at Flat 3/2, 2082 Dumbarton Road, Glasgow, G14 0HS (“the Property”)

Parties:

Miss Waleola Tade, 59 Lesmuir Drive, Glasgow, G14 0EG (“the Applicant”)

Miss Amber Milne, formerly residing at Flat 3/2, 2082 Dumbarton Road, Glasgow, G14 0HS and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 5 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis that a member of the landlord’s family intends to live in the Property, being Ground 5 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 10 June 2021. The Applicant was represented by Ms Bruce of Clarity Simplicity Ltd. The Respondent did not attend nor was she represented. The papers had been served on the Respondent by way of website advertisement between 6 May

2022 and 10 June 2022, following Sheriff Officers being unable to serve the papers due to the Property appearing to be unoccupied. The Tribunal was satisfied that the application had been served in terms of Rule 6A and that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 27 November 2020. A Notice to Leave had been served on the Respondent on the basis of Ground 5 of Schedule 3 to the 2016 Act, on 21 June 2021 by Sheriff Officer. The Applicant's sister intends to move into the Property. She has a young baby and has moved to Glasgow from Aberdeen for family support, as her husband often works abroad. She is currently living with the Applicant and the Applicant's mother in a property which only has two bedrooms. The Applicant's representative submitted that the Respondent was not believed to be living in the Property any longer, but had not been in contact with the Applicant to confirm same. The Applicant had recently instructed Sheriff Officers to serve a Charge for Payment on the Respondent at the Property, following obtaining a payment order from the Tribunal. The Sheriff Officers were unable to effect service and reported back that the Property appeared to be unoccupied, with a neighbour confirming that it had been empty for some time.

4. The Tribunal pointed out that there was disparity in the explanation of which family member intended to live in the Property, between the Notice to Leave and the affidavits lodged with the application. The Notice to Leave set out that the applicant's mother intended to live in the Property, as she was moving from England to Glasgow and had nowhere else to stay. The affidavits provided by the Applicant and her sister set out that it was the applicant's sister who intended to move into the Property. The Applicant's representative explained that at the time the Notice to Leave was served, it was the intention that the Applicant's mother would move into the Property to live. However, subsequently the Applicant's sister had her baby and her circumstances changed. When she moved into the property occupied by the Applicant and their mother, this had caused some tension and it was agreed that the best solution would be for the Applicant's sister to move into the Property with her baby to have her own independence, but be near enough to the Applicant and their mother, for additional support.

5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (vi) Affidavits by the Applicant and the Applicant's sister

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 27 November 2020;
- (ii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 5 of Schedule 3 to the 2016 Act, and which was served on 21 June 2021;
- (iii) The Applicant’s sister intends to live in the Property for at least three months

- Reasons for Decision

7. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

8. Ground 5 of Schedule 3 to the 2016 Act states as follows:

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.

9. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 5 of Schedule 3 to the 2016 Act had been met, namely that a

member of the Applicant's family intend to live in the Property for at least three months.

10. In terms of Schedule 1 of the Coronavirus (Scotland) Act 2020 the Tribunal is required to determine the reasonableness of the Order being sought. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Applicant, her mother and sister and sister's child are currently living in a 2 bedroom property, which is too small for their needs. The Sheriff Officers who attempted to serve the Charge for Payment as instructed by the Applicant, and who attempted to serve the application as instructed by the First-tier Tribunal, have both reported that the Property appears to be unoccupied. Accordingly, it appears that the Respondent has already moved out of the Property and obtained alternative accommodation. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

11. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 5 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.


Fiona Watson

Legal Member/Chair

10 June 2022
Date