



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/22/1143

Re: Property at 4 Park View, Newcraighall, EH21 8RP (“the Property”)

Parties:

Mr Adam Kyle, Rydal, Balmonth Farm, Carnbee, Anstruther, KY10 2RU (“the Applicant”)

Mr Ivaylo Atanasov, Ms Milena Varbanova, 4 Park View, Newcraighall, EH21 8RP (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the Respondents

Introduction

1. This is an application under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. Service of the proceedings and intimation of the Case Management Discussion (CMD) took place upon the respondents by Sheriff Officers on 24 May 2022.
3. The CMD took place by teleconference on 15 July 2022 at 10.00 am. The applicant was represented by Miss Alexandra Woolley, trainee solicitor of Messrs Bannatyne Kirkwood France & Co Solicitors. The respondents both joined personally and represented their own interests.

Findings and Reasons

4. The property is 4 Park View, Newcraighall EH21 8RP.
5. The applicant is Mr Adam Kyle who is the heritable proprietor of the property and the registered landlord. The respondents are Mr Ivaylo Atanasov and Ms Milena Varbanova.
6. The parties entered into a private residential tenancy in respect of the property which commenced on 19 March 2021. The rent was stipulated at £800 per month.
7. The applicant relies upon ground 4 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to live in the let property.
8. Ground 4 was originally drafted as a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020 all eviction grounds are discretionary. Additionally the notice periods were extended by virtue of the 2020 Act.
9. The relevant notice period under ground 4 was previously one of 84 days and at the time that the notice to leave was served was one of 3 months.
10. The notice to leave relied upon in the eviction application has been prepared in accordance with the provisions of Section 62 of the Act. This requires an additional two days to be added on for deemed service of the notice and an additional one day at the end. The date specified in the Notice to Leave, being the earliest day of the relevant proceedings being initiated to the tribunal, should therefore be calculated at a total of 3 months plus 3 days from the date of completion.
11. The notice to leave relied upon in this case is dated 18 January 2022 and stipulates that the earliest an application be submitted to the tribunal would be 21 April 2022. The notice is therefore valid. There is evidence in the form of the Sheriff Officers execution that service of the notice to leave took place upon the respondents on 20 January 2022.
12. In support of the ground of eviction the applicant produced an affidavit and documentary evidence which explains the circumstances. His affidavit is dated 12 May 2022. This sets out that the applicant and his wife, Fiona Kyle, lived in the let property between October 2017 and October 2020. At that time they moved North for work purposes. Their circumstances have now changed. The applicant's wife has now started a new job as a speech and language therapist. A copy of her NHS Lothian contract has been produced which shows that she commenced in that post on 14 March 2022. The let property is the only one which the applicant or his wife own.

13. The tribunal was satisfied on the basis of the credible and reliable evidence produced that it is the applicant's genuine intention to return to live in the let property with his wife for at least 3 months.
14. The tribunal proceeded to consider the issue of reasonableness of making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.
15. The applicant and his wife's general circumstances are as hereinbefore described in paragraph 12 above. They are currently homeless. They are residing between hotel and short term holiday let accommodation whilst they await return to the let property.
16. The applicant's wife is currently heavily pregnant. Their first child is due in September 2022. They require a stable home to provide a stable and secure home for their child.
17. The respondents are both employed as delivery drivers. The second respondent suffers from endometriosis. Her condition is painful though variable. For the majority of the time she is able and capable of work as a driver which is physically demanding. This requires significant physical function, including grip, power in both the upper and lower limbs and joint movement, all in conjunction with substantial cognitive powers of thought, perception, memory, reasoning, concentration, judgement and co-ordination.
18. The respondents have one son who is aged 6 years. Their son has already moved school three times since starting his primary education. He remains young and is adaptable. He has no special health or educational needs.
19. A relevant section 11 notice has been issued on behalf of the applicant to the relevant local authority. The tribunal was satisfied that it is most likely that the respondents will be provided with suitable alternate accommodation for themselves and their son in the event of an eviction order being made against them. The respondents have already notified the local authority directly of their need and are being supported by Shelter. The respondents' prospects of obtaining suitable accommodation will be enhanced due to their income as they both work.
20. Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order.
21. The Tribunal recognises that the decision to evict will impact negatively upon the respondents but this is lawful, proportionate and necessary. The Tribunal however extended the standard period for implementation of the eviction beyond the standard 30 days to a period of almost 6 weeks until 31 August 2022. This will assist the respondents and is reasonable.

Further comments

22. The Tribunal understood that English is not the primary language of the Respondents, who are Bulgarian nationals. The second respondent made all the oral submissions. Her English was very good. At the commencement of the hearing the tribunal enquired whether she understood all of the written documentation and whether she was understanding everything which was being said at the hearing. She confirmed that there was no language barrier.
23. The Respondents had the opportunity to obtain advice and representation, and in fact had taken advice from Shelter in advance of the hearing.
24. The Tribunal found that none of the material facts upon which the decision based were in dispute and accordingly were able to finally determine the application at the CMD with referenced to rule 17(4), applying the overriding objective contained in rule 2.

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.

Richard Mill

15 July 2022

Legal Member/Chair

Date