



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/2175

Re: Property at 33 Johnston Avenue, Stirling, FK9 5DD (“the Property”)

Parties:

Mr Manjinder Sandhu, The Laurels, Abercromby Drive, Bridge of Weir, FK9 4EA (“the Applicant”)

Ms Lesley Ann Marshall, 33 Johnston Avenue, Stirling, FK9 5DD (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. By application received in the period between 4th July and 15th September 2022 and made under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an eviction order under ground 5. The Applicant’s representative lodged a private residential tenancy agreement commencing on 1st April 2020, a statement from the Applicant’s son, a section 11 notice with proof of service, a rent statement showing rent arrears in the sum of £6500, and a Notice to Leave dated and served on 23rd February 2022, with proof of service.
2. Notification of the application and the forthcoming CMD was made upon the Respondent personally by Sheriff Officer on 17th November 2022.
3. By email dated 16th December 2022, the Applicant’s representative lodged an updated rent statement showing rent arrears in the sum of £8450.

The Case Management Discussion

4. A CMD took place by telephone conference on 19th December 2022. Neither party was in attendance. The Applicant was represented by Ms Catherine Berrill, Solicitor.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Ms Berrill said there had been no recent contact from the Respondent, however, in early December, the Applicant had been contacted by the local authority with regard to his responsibility to pay council tax for the Property, which suggested the Respondent may have moved out. Ms Berrill had written to the Respondent to ascertain if she was still residing at the Property, but had received no response. The Applicant had driven by the property but had not been able to ascertain whether or not it was still occupied.
7. Ms Berrill confirmed that she had taken the statement from the Applicant's son regarding his intention to reside in the Property as his only or principal home. There had been no change in his circumstances since the statement was taken.
8. Ms Berrill said it was believed that the Respondent resided with her partner at the Property and there may be a child. She was not aware if the Respondent was in employment and there was no indication she was in receipt of benefits. There had been a rent-free period for the first year of the tenancy, as the Property required renovation, and the Respondent's partner was going to carry out the work. There had been talk of the Respondent purchasing the Property but that had not happened. Rent had been paid for a few months after that but then ceased. Rent arrears in the sum of £8450 had accrued.
9. The Tribunal adjourned to consider its decision.

Findings in Fact and Law

10.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property on 1st April 2020.
 - (ii) A qualifying member of the Applicant's family intends to live in the let property.
 - (iii) A qualifying member of the Applicant's family intends to occupy the let property as their only or principal home for at least 3 months.
 - (iv) It is reasonable to grant an eviction order.

Reasons for Decision

11. Ground 5 Schedule 3 of the Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property. The Tribunal may find that the ground applies if a qualifying 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.
12. The Tribunal is satisfied that Ground 5 has been established, in that the Applicant's son intends to occupy the Property as his only or principal home for at least 3 months.
13. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties, and the fact that there are considerable arrears of rent. The Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
15. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
16. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

17. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 20^h January 2023

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.



Legal Member/Chair

19th December 2022
Date