



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/22/2600

Re: Property at 42 Laburnum Avenue, Greenhills, East Kilbride, G75 9EU (“the Property”)

Parties:

Mrs Amanda Monteith, 66 Tullis Gardens, Glasgow, G40 1AH (“the Applicant”)

Ms Rebecca Czarnecka and Mr Lee Devine, 42 Laburnum Avenue, Greenhills, East Kilbride, G75 9EU (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 42 Laburnum Avenue, Greenhills, East Kilbride, G75 9EU 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 Respondents. The order will include a power to Officers of Court to eject the Respondents 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 their name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 28 July 2022, the Applicant 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”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties, an affidavit dated 24 March 2022, a Notice to Leave with receipt signed by both Respondents and dated 26 March 2022 Track and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 29 July 2022.
3. On 23 September 2022, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 16 November 2022 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 7 December 2022. The Tribunal advised parties on 16 November 2022 that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 20 December 2022. This paperwork was served on the Respondents by Andrew McLean, Sheriff Officer, Glasgow on 17 November 2022 and the Executions of Service was received by the Tribunal administration.
5. Neither Respondent made any written representations by 7 December 2022.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 20 December 2022 by way of teleconference. The Applicant appeared on her own behalf of the Applicant. Both Respondents appeared on their own behalf.
7. The Tribunal had noted the contents of the Applicant’s written submissions she had lodged on 13 December 2022. Her position was as laid out in the application and submissions. In short she had separated from her husband and whilst the separation was amicable the relationship was deteriorating; they were still living together in the matrimonial home. She was the sole owner of the Property but unfortunately the rent was not covering her variable mortgage which had increased.
8. She explained she had visited the Respondents to serve the Notice to Leave. She was aware Miss Czarnecka had approached the Council for rehousing. The Applicant had also approached South Lanarkshire Council to see whether they would buy back the Property, which would allow her to get the capital from the Property and allow the Respondents to remain in the Property as social tenants. Unfortunately, South Lanarkshire Council refused to buy the Property back. The Applicant explained her options to get another mortgage to buy another property were extremely limited. She understood the Respondents needed a three-bedroom house and that the Council were aware of their needs.

9. On being questioned by the Tribunal she confirmed her intention was to move back into the Property and that she was not in any rush to sell it. Ultimately, she may decide to downsize, but her intention was certainly to move into the Property and live there for the foreseeable future.
10. Miss Czarnecka advised that neither Respondent disputed the application. They simply needed a date for eviction. This would enable them to move forward. Mr Devine confirmed that was their position.
11. Miss Czarnecka explained they had first sought advice regarding rehousing in March after the Notice to Leave had been served. They had been given contrary information from the homelessness team; she has lodged a complaint about that. However, the Council have advised there is the possibility of two three bedroom properties becoming available on a temporary basis. She explained the Respondents had 5 children between them with Mr Devine also having a daughter from a previous relationship who also lived with them. The six children's' ages ranged from 13 years to 6 months old. The family were entitled to a 4 bedroom house and in order for them to move forward the applicant had to be granted the Order. They were at the top of the waiting list. Mr Devine confirmed he had nothing further to add to what Miss Czarnecka had submitted.

Reasons for Decision

12. The Tribunal was satisfied that the Applicant had properly served the Notice to Leave under the 2016 Act. The Tribunal was also satisfied on the basis of the Applicant's submissions that she satisfied the eviction ground stated in the Notice to Leave, namely Ground 4 of Schedule 3 of the 2016 Act and that she had every intention of living in the Property. A case under Ground 4 of Schedule 3 was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 29 July 2022 had been served.
13. 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 all parties. The Tribunal considered neither Respondent had disputed the basis for the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by all parties and in particular the Respondents, who were both frank and honest about their personal circumstances, that the factual basis of the application had been established. There was no dispute as to the facts. The Applicant needed to obtain an Order to allow her to move from out of the matrimonial home and the Respondents needed the Applicant to obtain the Order to allow them to obtain temporary accommodation.
14. 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

on the basis of the submissions of Mrs Monteith that she had a desperate need to move back into the Property. The Respondents had sensibly taken advice from the homeless team at South Lanarkshire Council and had the possibility of temporary accommodation being offered to them but needed the Order to allow this to be offered to them. They were at the top of the list for permanent accommodation. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order

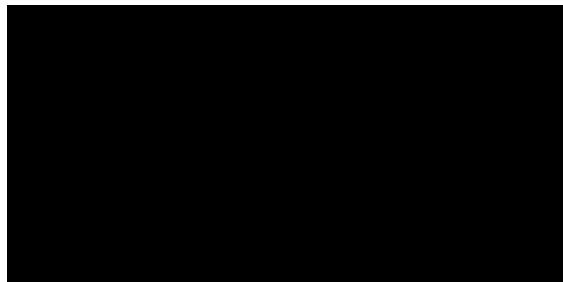
15. In the circumstances the Tribunal considered that in terms of Ground 4 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

16. 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.



Legal Chair

20 December 2022

Date