



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

Chamber Ref: FTS/HPC/EV/22/3063

Re: Property at Flat 0/1, 59 Boyd Street, Glasgow, G42 8AG (“the property”)

Parties:

Mrs Zarina Kusar, 62 Langrig Road, Glasgow, G21 4XR per G4 Properties, 52 Albert Road, Glasgow G42 8DN (“the applicant”)

Mr Muhammad Qasim Kausar and Mrs Rabia Qasim Kausar, both of Flat 0/1, 59 Boyd Street, Glasgow, G42 8AG, (“the respondents”)

Tribunal Members:

David Preston (convener) and Eileen Shand (ordinary member)

Decision (in absence of the Respondent)

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

Background:

1. By application dated 21 August 2022 the applicant applied for an order for eviction and possession of the property on the basis of Ground 4 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020.
2. The papers before the tribunal comprised: Private Rented Tenancy Agreement dated 6 February 2019; Notice to Leave dated 4 April 2022 with covering email to respondent of that date; Notice under section 11 of the Homelessness etc (Scotland) Act 2003; Affidavit of the applicant dated 18 October 2022; Print of Title Sheet for GLA10933; Sheriff Officer’s Certificates of Intimation 21 December 2022 confirming service of a full set of papers on the respondents.

3. By Decision dated 16 November 2022, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal. Letters of Intimation dated 20 December 2022, with Notice of the Case Management Discussion (CMD) to be held by telephone conference at 10:00 on 16 February 2023 together with the case papers was served on the respondents by Sheriff Officers on 21 December 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Citation of that date.

Case Management Discussion

4. Mr Imran Haq of G4 Properties Ltd attended on behalf of the applicant. The start of the CMD was delayed until 10:10 by which time the respondents had neither appeared nor were represented.
5. The tribunal was satisfied that due notice of the CMD had been served on the respondents together with a full set of papers relating to the application and they had accordingly voluntarily waived their right to be present or represented and the tribunal was content to proceed in their absence.

Discussion

6. The convener outlined the purpose of the case management discussion and indicated that the tribunal was satisfied that required Notices had been duly served on the respondents by the applicant or her agents. However, in terms of the coronavirus legislation the tribunal required to be satisfied that the granting of an eviction order was reasonable in all the circumstances. The tribunal noted the Affidavit of the applicant dated 18 October 2022 which confirmed her intention to live in the property.
7. Mr Haq advised that he had been in regular contact with the respondents following service of the Notice to Leave and had offered assistance in identifying alternative accommodation, but none of the options which had been found were taken up by them. In particular, he had identified a 3 bedroomed second-floor property which had been rejected as they would prefer ground floor property. He had also shown the respondents how to access the RightMove website and set up alerts to receive notification of properties becoming available for rent. He had formed the view that the respondents had not cooperated with his efforts to assist them in finding other accommodation and then had stopped communicating altogether.
8. Mr Haq said that his main contact with the respondents had been between service of Notice to Leave in April 2022 and the end of that year, since which time he had not had any response from them. He said that at the start of the tenancy the respondents had occupied the property along with their two children. However, he had subsequently formed the impression that it was just the first named respondent living there. It had been suggested to him that the second named respondent and the family may have returned to Pakistan, although he could not be certain.
9. Mr Haq advised that he had very little knowledge of the personal circumstances of the respondents but understood that their children are teenagers. The property

comprises a 2 bedroomed ground floor flat with additional communal areas. No adaptations had been carried out to the property. He confirmed that there had been no difficulties with the management of the tenancy, although on some occasions he had been required to “nudge” the respondents to pay the rent due although it had never fallen more than a couple of weeks behind.

10. Mr Haq advised that so far as he was aware, the applicant did not own any other property. She currently resides with extended family in larger accommodation, and he believed that she had recently had another child and was looking to move from her present accommodation. He was not aware of any specific health issues in respect of the applicant or her family, although tensions arising from shared living with the extended family were beginning to have an adverse effect on her mental health. He also said that one of the applicant’s children attends a school near to the property. It was for this reason that she sought to recover possession and reside in the property herself. She had been unaware of the length of time that the tribunal process would take under the coronavirus legislation.

Findings in Fact

11. The applicant is the owner of the property.
12. The applicant and the respondents entered into a Private Residential Agreement for the Property on 6 February 2019.
13. The start date for the tenancy was 6 February 2019.
14. The applicant gave the respondent Notice to Leave on 4 April 2022.
15. The respondents continue to reside at the Property.

Findings in Fact and Law

16. The Private Residential Agreement dated 6 February 2019 contains eviction grounds including Ground 4: “It is an eviction ground that the landlord intends to live in the property.”
17. The Notice to Leave which was dated 4 April 2022 referred to Ground 4 which was being relied on by the applicant as the reason for seeking recovery of the property.
18. The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 30 June 2022. The present application to the tribunal was dated 24 August 2022.

Reasons for Decision:

19. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
20. The tribunal accepted the information in the file and as provided by Mr Haq. It was satisfied that Mr Haq had offered significant assistance to the respondents to find alternative accommodation, but they had failed to respond to his efforts or to engage with him to enable them to relocate. The respondents had failed to provide the tribunal with any information regarding their personal circumstances or their reasons for not cooperating with Mr Haq, leaving the tribunal to consider the limited information from Mr Haq from his observations and contact with the respondents.
21. The tribunal determined that the statutory requirements for the eviction had been duly complied with and considered the question of whether the granting of an eviction order was reasonable in all the circumstances. It determined that the information provided was sufficient for it to determine that an order for eviction was reasonable. The respondents had not engaged with the tribunal process and Mr Haq had presented such limited information about them as he could.

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.

D. Preston

16 February 2023