



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 (“The Act”)

Chamber Ref: FTS/HPC/EV/22/3854

Re: Property at 76 Park Crescent, Bonnyrigg, Edinburgh, Midlothian, EH19 2AR (“the Property”)

Parties:

Mr Marian Cholakov, Mrs Radka Cholakov, Green Man Gardens, 1a Green Man Gardens, West Ealing, London, W13 0SE (“the Applicant”)

Ms Dione Loise Turnbull, 76 Park Crescent, Bonnyrigg, Edinburgh, Midlothian, EH19 2AR (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order.

Background

The Applicants seek an Eviction Order on the basis of ground 1 of Schedule 3 of the Act in that it is said that the Applicant wishes to sell the Property. The Application is accompanied by a copy of the tenancy agreement between the parties, the notice to leave relied on and proof of it having been served, a copy of the relevant notice to the local authority under s11 of the Homelessness (etc) (Scotland) Act 2003 and correspondence said to evidence the intention to sell the Property.

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 21 February 2023. The Applicants were represented by Mr Chisholm of Complete Clarity Solicitors. There was no appearance by or on behalf of the Respondent. Mr Chisholm invited the Tribunal to grant the Application.

The Tribunal noted that the ground relied upon appeared established and all notices appeared to have been competently served. However certain representations made by the Respondent caused the Tribunal concern in respect of the Respondent's abilities to properly participate in these proceedings.

The Tribunal considered that the proper course of action was to continue the Application to another CMD and to make Directions on the Respondent obliging her to consider taking advice and appointing a representative to assist her if necessary. The Respondent would also be ordered to set out fully in writing any defence to the Application that she intended to rely on.

Subsequent to this, the Respondent corresponded with the Tribunal to confirm that her daughter, Caitlin Turnbull, would be representing her and assisting her to participate going forward.

Case Management Discussion

The Application called for a further Case Management Discussion by conference call at 10 am on 12 May 2023. The Applicants were present and again represented by Mr Chisholm of Complete Clarity Solicitors. The Respondent was also personally present together with her daughter, Caitlin Turnbull. The Respondent did not actively oppose the Application although she was understandably anxious to secure alternative accommodation. She had been in touch with the local authority who informed her that she would receive housing assistance once any eviction order had been granted. The Tribunal discussed the Application with both parties and assessed the reasonableness or otherwise of granting any eviction order.

Having done so, the Tribunal made the following findings in fact.

- I. *The parties entered into a tenancy agreement whereby the Applicants let the Property to the Respondent on a Tenancy agreement which ought properly to be considered as a Private Residential Tenancy;*

- II. *The Respondent resides alone in the property, although a teenager known to the Respondent visits her each second weekend as part of a long standing arrangement;*

- III. *The Applicants now wish to sell the Property as they spend more each month on mortgage payments than they receive in rent. The current situation is financially unsustainable;*
- IV. *The Applicants have validly served a Notice to Leave in respect of Ground 1 of Schedule 3 of the Act which set out the appropriate periods before any application to this Tribunal would be made;*
- V. *The Respondent remains in occupation of the Property, in part because she cannot find alternate housing until such time as this Tribunal makes an Eviction Order;*
- VI. *The Applicants have complied with s11 of the Homelessness (Etc.) (Scotland) Act 2003;*
- VII. *It is reasonable that an Eviction Order is made.*

Decision

Having made the above findings in fact, the Tribunal granted the Application and made an Eviction Order.

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.

A. McLaughlin

Legal Member/Chair

12 May 2023

Date

