



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/20/2621

Re: Property at 18 Park Avenue, Flat 4, Dundee, DD4 6PP (“the Property”)

Parties:

Mr Michael MacGregor, 41B Church Street, Broughty Ferry, Dundee, DD5 1HB (“the Applicant”)

Mr Trevor Aaron Adamson, Mr Brian Tommy George Scrimger, 327 Clepington Road, Flat 1/R, Dundee, DD3 8BB; 18 Park Avenue, Flat 4, Dundee, DD4 6PP (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property.

Background

1. By email dated 17 December 2020 the Applicant’s representatives Angus Glen Properties, Dundee applied to the Tribunal for an order for the Eviction of the Respondents from the property in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the Tenancy agreement The Notice to Leave and Section 11 Notice together with proof of intimation in support of the application.
2. By notice of Acceptance dated 22 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant's representative by post on 25 January 2021 and was served on the Respondents by Sheriff Officers on 3 February 2021.

The Case Management Discussion

4. A Case Management Discussion was held by teleconference on 8 March 2021. The Applicant's representative Mrs Lynn McIntosh along with Mr David McIntosh attended on behalf of the Applicant. The Respondents did not attend and were not represented. The Tribunal being satisfied that proper intimation of the Case Management Discussion had been given to the Respondents determined to proceed in their absence.
5. Mrs McIntosh explained that the First Respondent had lived in the property since October 2015. He had then formed a relationship with the Second Respondent and a new Private Residential Tenancy Agreement had been entered into in the joint names of the Respondents that commenced on 14 February 2018 at a rent of £380.00 per calendar month.
6. Mrs McIntosh went on to say that the Respondents' relationship came to an end acrimoniously and the First Respondent moved out of the property in about March 2019 and was currently renting another property. She said that sole tenancy of the property had been offered to the Second Respondent but he had not co-operated and no agreement had been reached. A meeting between the Respondents and Mrs McIntosh had taken place to try to agree matters but it had been unsuccessful with a lot of swearing on the part of the Second respondent. She said the Second Respondent was not allowing access for mandatory checks although he had allowed access recently following a water leak into premises beneath the property.
7. Mrs McIntosh explained that the Applicant had separated from his wife and had returned to live in Dundee and now required to move back into the property. Originally he had been looking to sell the property but that was no longer the case. He was now living in rented accommodation at a rent of £625.00 per month. He was trying to sort out financial matters with his wife and needed to move back into the property to be able to resolve his finances.
8. Mrs McIntosh confirmed that the Notice to Leave had been sent by email to both Respondents on 15 September 2020 and referred the Tribunal to the relevant emails. She said that a copy of the Notice to Leave had also been delivered personally to the Second Respondent.
9. Mrs McIntosh confirmed a Section 11 Notice had been intimated to Dundee City Council and referred the Tribunal to the email exchange in this regard.
10. Mrs McIntosh advised the Tribunal that the Second Respondent had been offered the tenancy of another property at Thurso Crescent, Dundee which would have had gas central heating and double glazing as opposed to the Respondents' property which had electric heating and single glazing. The

property offered was also on a direct bus route to the Second Respondent's work and was at a similar rent. Mrs McIntosh said that the Second Respondent had failed to agree to a move.

11. Mrs McIntosh confirmed to the Tribunal that the Second Respondent had continued to pay the rent for the property.
12. Mrs McIntosh submitted that given the difficult personal circumstances of the Applicant and the fact that he was paying almost double in rent compared to the rent he was receiving for the property and given that attempts had been made to re-house the Second Respondent and he had failed to co-operate it was reasonable to grant the order sought. Mrs McIntosh went on to say that the Applicant wanted some solidity in his life and still had an acrimonious separation and financial settlement to sort out with his wife.

Findings in Fact

13. The parties entered into a Private Residential Tenancy agreement that commenced on 14 February 2018 at a monthly rent of £380.00.
14. The First Respondent moved out of the property in about March 2019 but has remained a joint tenant of the property.
15. The Second Respondent has remained in occupation of the property and continued to pay the rent.
16. The Applicant wishes to live in the property following the breakdown in his marriage.
17. The Applicant is currently living in rented accommodation in Dundee at a rent of £625.00.
18. The Respondents were served with a Notice to Leave by email on 15 September 2020.
19. A Section 11 Notice was intimated to Dundee City Council by email on 15 September 2020.
20. The Second Respondent was offered the lease of another property in Thurso Crescent, Dundee but declined the offer.

Reasons for Decision

21. The Tribunal was satisfied from the documents submitted and from the oral submissions that valid Notices to Leave had been served on the Respondents. The Tribunal was also satisfied that a Section 11 Notice had been properly intimated to Dundee City Council.

22. The Tribunal accepted the submissions made by Mrs McIntosh on behalf of the Applicant that he had separated from his wife and that he was currently living in rented accommodation in Broughty Ferry, Dundee at a rent of £625.00 per month. The Tribunal also accepted that it was the Applicant's intention to move into the property if he obtained possession of the property and that this would assist in resolving financial issues with his wife following his separation.
23. The Tribunal was satisfied from the oral submissions of Mrs McIntosh that attempts had been made to offer the Second Respondent suitable alternative accommodation but that the Second Respondent had been unwilling to participate in such a move. The Tribunal noted that the Second Respondent had been given the opportunity to attend the Case Management Discussion and make representations as to why the order sought should not be granted but had chosen not to make any such representations.
24. The Tribunal in reaching its decision was satisfied it had enough information before it to reach a decision and took account of the terms of the Coronavirus (Scotland) Act 2020 and in particular Section 1(3)(d) and concluded in weighing up all the circumstances before it that it was reasonable to issue an eviction order as sought by the Applicant.

Decision

25. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondents from the property.

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.

**Graham Harding
Legal Member/Chair**

**8 March 2021
Date**