



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/23/0385

Re: Property at The Loaning 184, Motherwell, ML1 3LL (“the Property”)

Parties:

Mrs. Freda de Zoete and Mr. Samuel de Zoete, both residing at Saudi Aramco, Abqaiq, 313111, Eastern Province, Saudi Arabia (“the Applicants”) per their agents, McEwan Fraser Legal, Claremont House, 130, East Claremont Street, Edinburgh, EH7 4LB (“the Applicants’ Agents”)

Mrs. Joyce Murphy nee Houston and Mr. Kevin Murphy residing at The Loaning 184, Motherwell, ML1 3LL (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

1. By application received between 7 and 9 February 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on Ground 5, the landlord’s family member intends to live in the property, of Schedule 3 to the Act. The Application comprised affidavits by both Applicants confirming that the first-named Applicant’s daughter and grandson are homeless and intend to live in the Property, copy Notices to Leave, copy notice in terms of Section 11 of the Homeless etc (Scotland) Act 2003, copy tenancy agreement between the Parties showing a start date of 4 December 2017 and copy of the Applicants’ title sheet for the Property. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 21 April 2023 at 14.00 by telephone conference. The CMD was intimated to the Parties and, in particular, was served on the Respondents by Sheriff Officer on 17 March 2023..

CMD

2. The CMD took place on 21 April 2023 at 14.00 by telephone. Neither Applicant took part and both were represented by Ms. Doyle of the Applicants' Agents. The Respondents took part, with the first-named Respondent speaking on their behalf.
3. The Tribunal explained that the purpose of the CMD was to identify the issues between the Parties and to determine if the Tribunal can grant the Order.
4. The first-named Respondent advised the Tribunal that the Application was not opposed or disputed, that the Respondents had made enquiries with North Lanarkshire Council in respect re-housing.
5. The Tribunal explained that, even though the Ground for the Application was established, the Tribunal required to be satisfied that it was reasonable to grant the Order.
6. The first-named Respondent advised the Tribunal that she and her husband resided at the Property with their year-old son, that her husband is in employment and that she does not work as she has mental health issues. She explained that she has been advised by North Lanarkshire Council that she and her husband's application for housing has been accepted and that if an eviction order is granted, an offer of housing will be made. She explained that it is their preference that they have public sector rented accommodation as it gives more security and protection for their son.
7. For the Applicants, Ms. Doyle explained that the Applicants' daughter and her infant son are living in temporary accommodation, provided by a family friend, which is some distance from family support. They intend to reside in the Property as their main and settled accommodation to access family support.

Issue for the Tribunal

8. The statutory Grounds and the procedure being established, the issue for the Tribunal is to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Parties at a monthly rent of which began on or around 4 December 2017;
 - ii) The Applicants have carried out the statutory processes required by the Act to recover possession of the Property;
 - iii) The Applicants' daughter and her infant son reside in temporary accommodation some distance from family support;

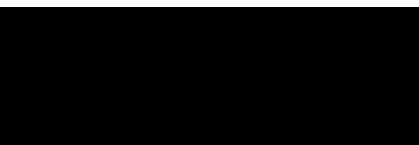
- iv) The Applicants' daughter intends to reside in the Property as her main and settled residence and to access family support to assist with her infant son;
- v) The Respondents have a one-year old son;
- vi) The first-named Respondent does not work and has health issues;
- vii) The second-named Respondent is in full time employment;
- viii) The Respondents have made enquires with their local authority, North Lanarkshire Council, for alternative accommodation and have been advised that they will be re-housed when an eviction order is granted and
- ix) The Respondents wish to be rehoused by North Lanarkshire Council.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the needs of both the Applicants' daughter and the Respondents and to their respective wishes. The Tribunal took the view that, as the Respondents will be able to secure alternative accommodation, they have a level of protection against homelessness which will meet their needs, whereas the Applicants' daughter, who requires to be closer to family support to assist with her son, does not have that protection. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
12. The Tribunal advised the Parties that Paragraph 1 of Schedule 2 to the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies and so, as at today's date, the earliest date for enforcement of the Order is 30 September 2023.
13. This Decision is 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.



Karen Moore

Legal Member

21 April 2023

Date