



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/21/1259

Re: Property at 56 Wingate Crescent, Dunbar, EH42 1BE (“the Property”)

Parties:

Mr Maqbool Ahmed, Greenbank, North Road, Dunbar, EH42 1AU (“the Applicant”)

Ms Anna Lukasova, Mr Vladimir Lukas, 56 Wingate Crescent, Dunbar, EH42 1BE (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 23rd May 2021 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondents, and provided with his application copies of the tenancy agreement, notice to leave, section 11 notice with proof of service, and various documents and affidavits from family members.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

A Case Management Discussion was held at 10.00 on 22nd October 2021 by Tele-Conference. The Applicant did not participate, but was represented by his daughter, Mrs Amna Ahmed. The Respondents did not participate, nor were they represented.

The Tribunal set a Hearing to allow the Applicant to lead evidence in relation to the method of service of the notice to leave on each of the Respondents, and with regard to the reasonableness of the Tribunal granting the order sought.

A Hearing was held at 10.00 on 21st January 2022 by Tele-Conference. The Applicant did not participate, but was again represented by his daughter, Mrs Amna Ahmed. The First Respondent, Ms Anna Lukasova, participated, and was not represented. The Second Respondent, Mr Vladimir Lukas, did not participate, nor was he represented.

The First Respondent advised the Tribunal clerk shortly before the scheduled start time for the Hearing that her first language is Czech, that she had limited understanding of English, and requested a Czech interpreter.

The Tribunal clerk made efforts to obtain the services of a Czech interpreter, but was unable to do so at short notice. The Tribunal advised the parties of the potential difficulty, and confirmed with the First Respondent that she had very limited command of the English language. The Tribunal then adjourned for 30 minutes to make further attempts to obtain the services of a Czech interpreter.

Upon resuming, the Tribunal was advised that it had not been possible to obtain the services of a Czech interpreter, and for that reason the Tribunal concluded that it would not be in the interests of justice, and consistent with its overriding objective of dealing with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to proceed with the Hearing without an interpreter for the First Respondent to allow her to participate fully in the application.

The Tribunal set a continued Hearing, at which the presence of a Czech interpreter would be arranged for the Respondents. The Tribunal would also seek to provide the Respondents with a copy of the letter intimating the continued Hearing details and also the Case Management Discussion note, both translated into Czech.

The Continued Hearing

A continued Hearing was held at 10.00 on 16th March 2022 by Tele-Conference. The Applicant participated, and was accompanied by his daughter Mrs Nazeasaqib as a supporter. He was again represented by his daughter, Mrs Amna Ahmed. Neither Respondent participated, and they were not represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. Notice had been given translated into Czech, and

the Tribunal clerk attempted to telephone the Respondents on the telephone number they provided at the start of the continued Hearing, but was met with no answer.

Mrs Ahmed confirmed to the Tribunal that a copy of the notice to leave had been sent to the Respondents by e-mail to the First Respondent, and that a copy had been posted to both Respondents by recorded delivery post. Unfortunately, the recorded delivery slip had been lost.

However, Mrs Ahmed e-mailed the Tribunal during the continued Hearing an e-mail addressed to her dated 28th February 2022 from Sarah Nelson at East Lothian Council. That e-mail confirmed that Sarah Nelson was advising both Respondent regarding local authority housing after they provided the Council with copies of the notice to leave and confirmed that the Respondents had both received service of the notice to leave.

The Tribunal was invited by Mrs Ahmed with reference to the application and papers to grant the order sought on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 11th January 2021 relied on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that a member of the Applicant's family, namely his son and daughter-in-law, intend to live in the Property.

The Applicant had provided sworn affidavits from himself and from his son confirming that the Applicant's son intends to live in the Property with his wife as their only or principal home for at least three months, as the Applicant's son and his wife wish to move out of the Applicant's home to live in a home of their own.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Paragraph 5 of Schedule 3 to the Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property. The Tribunal may find that this ground applies if (1) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact. Paragraph 5 provides that a son of the landlord is a qualifying relative.

The Tribunal was satisfied that ground 5 had been established. The landlord's son intended to occupy the Property with his wife as his only home for at least 3 months, and *prima facie* the Applicant had made out that it was reasonable to issue an eviction order on account of that fact.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where *prima facie*

reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondents had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the continued Hearing. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

In those circumstances, having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

Decision

In these circumstances, the Tribunal made an eviction order against the Respondents in this application.

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.

Neil Kinnear

Legal Member/Chair

16/03/2022

Date