



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 (Act)

Chamber Ref: FTS/HPC/EV/21/0475

Re: Property at 41 Hartlaw Crescent, Glasgow, G52 2JJ (“the Property”)

Parties:

Mrs Tammi Clark, 55 Greengairs Avenue G51 4LH, Glasgow, G51 4LH (“the Applicant”)

Miss Lynsey Lansdowne, 41 Hartlaw Crescent, Glasgow, G52 2JJ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 51(1) of the Act for eviction and recovery of possession on Ground 4 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 1 March 2021;
2. PRTA commencing 16 July 2019;
3. Notice to Leave dated 20 November 2020;
4. Sheriff Officer Certificate of Service of Notice to Leave dated 24 November 2020;

5. Section 11 Notice;
6. Affidavit of Applicant dated 27 February 2021;
7. Letter from Applicant dated 1 March 2021;
8. Written Representations from the Respondent dated 9 April 2021 enclosing Inventory of Productions;
9. Section 11 Notice and email from Glasgow City Council dated 25 March 2021;
10. CMD Note dated 22 April 2021;
11. Direction dated 22 April 2021;
12. Written Submissions from Applicant dated 20 May 2021 comprising application to amend and enclosing evidence of service of section 11 Notice;
13. Respondent's Written Submissions in response dated 28 May 2021;
14. Further Inventory of Productions from Respondent;
15. Email response from Applicant to Respondent's written representations on amendment dated 28 May 2021.

Hearing

The Applicant participated and was represented by Ms Robinson. The Respondent did not participate but was represented by Ms Souter of Shelter.

The case had called for a CMD by conference call on 22 April 2021. The Tribunal had considered matters and determined that evidence would need to be heard on the competency of the section 11 Notice. In particular, evidence of service of the subsequent section 11 Notice would be required.

The Tribunal had also been of the view that evidence would need to be heard with regard to the question of reasonableness of granting the order sought. In this regard the Tribunal had ordered the Respondent to produce evidence of her attempts to obtain alternate accommodation in term of the Direction dated 22 April 2021.

Amendment Application

Between the CMD and the date of the Hearing the Applicant sought to amend the application to include a claim for rent arrears. The Applicant had lodged written submissions in support of this which the Respondent had responded to and objected.

The Tribunal refused the application to amend on the basis that it raised matters which could not competently or appropriately be included within the eviction application under Rule 109 and would require a separate application to be made in terms of Rule 111. The application to amend had only been made on 20 May 2021 and the rent arrears were being disputed on the basis of withholding due to an alleged failure to comply with the Repairing Standard (which was the subject of separate proceedings before the Tribunal and due to go to Hearing on 1 July). The Tribunal was of the view that it would be more appropriate and in accordance with the overriding objective for any application for rent arrears to be heard alongside the Repairing Standard case if possible.

Disputed Issues

The Tribunal then heard from the Parties with regard to the 2 issues identified at the CMD for determination.

The Respondent informed the Tribunal that the competency of the section 11 Notice was no longer being challenged and that the defence to the application was being withdrawn. The Tribunal clarified with the Respondent that the “reasonableness” of any eviction order was no longer being challenged and that was confirmed. The Respondent sought to adjourn proceedings rather than have an eviction order granted against her. She had secured alternate accommodation which she expected to move into by 16 June 2021.

The Applicant opposed any adjournment and sought the eviction order to be granted to give them certainty.

The Tribunal adjourned to consider the application to adjourn and whether or not, if the application to adjourn was refused, it had sufficient information before it to determine the matter without hearing any further evidence.

The Tribunal, after consideration and deliberation, refused the application to adjourn. The defence was no longer being insisted upon and the Respondent had sourced alternate accommodation which she was in the process of moving into and would vacate the Property by 16 June 2021. There could be prejudice to the Applicant if there was any delay in vacating the Property and a further Hearing would be required. It was in accordance with the overriding objective and the interests of justice to proceed and determine the matter.

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 4 which are in the following terms:

Landlord intends to live in property

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 16 July 2019;
2. The Applicant is the owner of the Property and intends to occupy the let property as her only or principal home for at least 3 months;
3. Notice to Leave had been served on the Respondent by Sheriff Officers on 24 November 2020;
4. Section 11 notification had been served on the local authority on 1 March 2021;
5. The Respondent does not oppose the order for recovery of possession;
6. The Respondent has obtained alternate accommodation which she is in the process of moving into;
7. The Applicant needs the Property for accommodation for her husband and herself;
8. The Applicant is currently residing with her mother and the accommodation is unsuitable for her and her husband. The Applicant has no other accommodation.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that it was reasonable to do so in the circumstances where the Applicant clearly needed the Property to live in and the Respondent had sourced alternate accommodation which she was in the process of moving into. The Tribunal did not require to hear any further evidence.

The Tribunal was satisfied that Ground 4 had been established and accordingly granted the application for eviction and recovery of possession.

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.

Alan Strain

3 June 2021

Legal Member/Chair

Date