



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/21/2202

Re: Property at 33 Douglaston Gardens South, Milngavie, Glasgow, G62 6HS (“the Property”)

Parties:

Mr John Edward Scott Bennet, 4 Morven Road, Bearsden, G61 3BU (“the Applicant”)

Mr Alan Gilmartin, 33 Douglaston Gardens South, Milngavie, Glasgow, G62 6HS (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted under Ground 4 in respect that the Applicant intends to live in the Property.

Background

1. This is an application for an eviction order.
2. An application was received from the Applicant’s solicitor on 10 September 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 4 as set out in Schedule 3 of the 2016 Act.
3. Attached to the application form were:

(i) Copy Private Residential Tenancy Agreement (PRT) between the parties which commenced on 29 July 2020

(ii) Copy notice to leave dated 28 April 2021, citing ground 4, together with proof of sending by the e-mail address used by the Respondent in the PRT on 28 April 2021 and e-mail from the Respondent forwarding this on to an officer from East Dunbartonshire Council that same date.

(iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to East Dunbartonshire Council on 10 September 2021.

(iv) Affidavit from the Applicant dated 6 September 2021

4. The application was accepted on 29 September 2021. Notice of the Case Management Discussion (CMD) scheduled for 10 November 2021, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 6 October 2021.
5. No written representations were received from the Respondent prior to the CMD.

The Case Management Discussion (CMD)

6. A CMD was held by teleconference call on 10 November 2021. The Applicant was in attendance as was his Representative Ms Euphemia Matheson. The Respondent also attended.
7. The Respondent said that he wanted the order for eviction just as much as the Applicant. He wanted out of the Property and had made an application to East Dunbartonshire for alternative housing. He said that the local authority will not consider him as a homeless priority until the order for eviction has been granted. He confirmed that as soon as he received the Notice to Leave that he had created his application for re-housing with the local authority. His personal circumstances have changed. He is now a full-time student and therefore there are numerous reasons why it would suit him to get out of the house. It is a high rent for him currently. He did not therefore oppose the order for eviction.

8. The Applicant's Representative moved the Tribunal to grant the eviction order as the legal grounds were established and in all the circumstances of the case it was reasonable to grant the Order.

Findings in Fact

9. The tribunal made the following findings in fact:

- The Applicant is the owner of the property and is the registered landlord of the property.
- There was a private residential tenancy in place between the parties, which commenced on 29 July 2020
- The Notice to Leave was dated 28 April 2021 and was sent by e-mail to the Respondent on that date. The Notice stated that an application for an eviction order would not be submitted to the tribunal before 31 August 2021.
- The Applicant intends to live in the Property for a period of at least 3 months.

Reasons for decision

10. Firstly, the tribunal was satisfied that the Notice to Leave had been validly served on the Respondent in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"), for the reasons set out above.

11. The tribunal then considered whether ground 4 had been established by the Applicant. Ground 4 as set out in Schedule 3 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states;

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 must find that the ground named by subparagraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(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.

12. The Affidavit produced by the Applicant confirms that he intends to reside in the Property. He is currently residing with his wife, on a temporary basis with his mother, at her home. He is the sole proprietor of the Property. This is the home of the Applicant and his wife. It is not a property that was bought with renting in mind. Due to work commitments he moved away from the area and decided to rent out the Property when he was working rather than it lying empty. It was always his intention to return to live there when he retired. His employment has now ended. He is retired and wishes to return to the Property. The position of living with his mother was always intended as a short-term solution. Not being able to return to the Property has been very disappointing and stressful for the Applicant as he does not know when he will be able to return to live there and to start his retirement.

13. The tribunal was satisfied on the basis of all the evidence before it that the requirements for ground 4 were established. The Affidavit produced by the Applicant clearly stated that he had the intention to live in the Property for at least 3 months after the Respondent ceased to occupy it. The tribunal accepted the evidence put forward by the Applicant as to the Applicant's reasons for intending to live in the Property and his intention to do so.

14. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 1(2) (c) of schedule 3 of the 2016 Act. In doing so, the tribunal took into account all of the circumstances of the case.

15. The Respondent here does not dispute the Applicant's intention to reside in the Property. He also wishes to leave the house and for an eviction order to be granted as soon as possible.

16. Having carefully considered all of the evidence and all of the circumstances of the case as set out above the tribunal considered that it was reasonable to grant an eviction order. The tribunal accordingly grants an eviction order against the Respondent under Section 51 and Ground 4 in Schedule 3 of the 2016 Act.

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.



Yvonne McKenna

Legal Member/Chair

10 November 2021

Date