



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/22/1794

Re: Property at 7 Babylon Avenue, Bellshill, ML4 2DW (“the Property”)

Parties:

Mr Graeme Walker, 10a Lee Place, Mossend, ML4 2QP (“the Applicant”)

Miss Ashley Devine, 7 Babylon Avenue, Bellshill, ML4 2DW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application could be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 10 June 2022, the Applicant sought an Eviction Order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 5 of Schedule 3 to the 2016 Act, namely that a Family Member intends to live in the Property.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 27 February 2022, and a Notice to Leave dated 9 March 2022, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order under Ground 5 of Schedule 3 to the Act and that the application would not be made before 10 June 2022. The Applicant also provided an undated “To Whom it May Concern” letter from his mother, Elizabeth Ann Jones, who stated that she was currently living in an upstairs flat and that she was moving in order to be nearer her son, the Applicant, for health reasons and to give them both peace of mind that she could get help quickly. She suffered from COPD and struggled with breathing and anxiety. She was finding it difficult to go out,

due to having to tackle the stairs to get into her home, especially if she had shopping. Security of tenancy was vital too, given her age (nearly 71). On 24 August 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 14 September 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 11 October 2022. The Applicant and the Respondent were both present.

When asked by the Tribunal why he had served a Notice to Leave less than two weeks after granting the Private Residential Tenancy Agreement, the Applicant stated that the Respondent had been his tenant in the Property for 5-6 years. He had served notice under her previous tenancy agreement but that had been defective and the advice he had received from a landlords' association was that, as the legislation had altered, he should enter into a new lease, namely a Private Residential Tenancy Agreement.

The Applicant told the Tribunal that his mother's condition was progressive and that she was deteriorating. He was going to adapt the Property so that there was a bedroom and bathroom at ground floor level. He wished to get her out of her present flat as soon as possible, because of her breathing difficulties when climbing stairs.

The Respondent told the Tribunal that she lived in the Property with her 4 children, aged 14, 11, 7 and 2. The family had moved into the Property on 17 January 2017, but the children's father had since died. The 3 eldest children attend schools in Bellshill. The Respondent is presently unemployed, and the rent is paid from her Universal Credit, but now that her youngest child is 2, she will be required to seek work and her Universal Credit entitlement will be affected. She told the Tribunal that she fears she may not be able to afford to stay in the private rented sector when her benefits are reduced, and she does not want to have arrears of rent. She and her family have been on the waiting list for a Council house for 14 years and, given her circumstances and the fact that the Property is overcrowded, she has been awarded maximum points for priority in rehousing, but the Council have told her they will only start the process of rehousing her when she has an Eviction Order issued against her.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that 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.

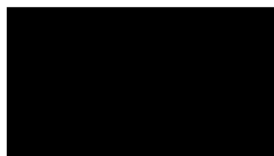
Ground 5 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that a member of the landlord's family intends to live in the let property and that the Tribunal may find that Ground 5 applies if a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of that fact. A landlord's mother is a "qualifying relative" for the purpose of Ground 5.

The Tribunal noted that the Property is a 3-bedroom terraced house on two floors, but that the Applicant intends to adapt it to enable her to have a bedroom and bathroom downstairs. The Tribunal also noted that the personal circumstances of the Respondent indicated that she and her family require a larger property and that, whilst she has the maximum number of points to be at the top of the waiting list for a Council house, the Council will not take steps to help her unless an Eviction Order is issued against her. Accordingly, having considered carefully the particular circumstances of both Parties, the Tribunal decided that it would be reasonable to issue an Eviction Order. The Tribunal decided to extend to 24 November 2022 the earliest date on which the Order can be enforced, in the hope that this will enable the Council to provide permanent rather than temporary alternative accommodation for the Respondent and her young family.

The Tribunal's Decision was 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.



Legal Member/Chair

11 October 2022
Date