

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Residential Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/2840

Re: Property at 65 Meikle Earnock Road, Hamilton, ML3 8AF (“the Property”)

Parties:

Ms Margaret Frame Woods, 27 Allanton Lea, Hamilton, ML3 8ET (“the Applicant”)

Mrs Ann Ashcroft and Michael Ashcroft, both 65 Meikle Earnock Road, Hamilton, ML3 8AF (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

Background

By application, received by the Tribunal on 12 August 2022, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Ground relied on was Ground 4 of Schedule 3 to the Act, namely that the Applicant intends to live in the Property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 3 May 2019, a Notice to Leave dated 20 January 2022, which set out the reason for the Applicant requiring the Property back and advised that no application for an Eviction Order would be made to the Tribunal before 21 April 2022, and a notarised Affidavit of the Applicant, dated 4 August 2022.

In the Affidavit, the Applicant stated that her daughter and granddaughter were looking to move into the Applicant’s present home. They were currently renting in an area which was not particularly safe with a lot of antisocial behaviour and the Applicant’s daughter was struggling to pay the rent of £450 per month. That was why the Applicant

was planning to move into the Property, which was close to her present home, so the family could be close together. The Applicant's daughter would inherit the Applicant's present home, so it made sense for the Applicant to move and let her daughter take over the mortgage payments of £227 per month, instead of paying rent of £450.

On 29 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 20 December 2022.

On 20 December 2022, Hamilton Citizens Advice Bureau provided written representations on behalf of the Respondents. They stated that the Respondents were distressed to receive the Notice to Leave, as they had understood that their tenancy would be long-term. The Respondent, Mr Ashcroft, had suffered a stroke and the present proceedings had caused him distress, given his health condition. If the Tribunal used its discretion to issue an Eviction Order, the Respondents would ask that it be suspended for 3-4 months, to allow the Respondents, who are both in their 60s, to be allocated suitable housing. The Respondents could not move, because, so far, South Lanarkshire Council had not been able to find a property for them to move into. They are both retired and cannot really afford the monthly rent. They are desperate to move into a property at a lower rent.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 31 January 2023. The Applicant was represented by Mr Rory Mellis of Thorntons LLP, solicitors, Dundee. The Respondents were represented by Mr Jordan Bird of Citizens Advice Bureau, Hamilton. Both the Applicant and the Respondents also participated in the Case Management Discussion.

The Applicant's representative, Mr Mellis, referred the Tribunal to her Affidavit and added that, in determining the question of reasonableness, the Tribunal should take into consideration the fact that the Notice to Leave had been served more than a year ago and the Respondents had had that period to find alternative accommodation. He told the Tribunal that delaying the effective date of an Eviction Order would be very frustrating for the Applicant.

For the Respondents, Mr Bird told the Tribunal that, when the Notice to Leave was served, they had not known about the issue with the Applicant's daughter. They had only become aware of this when they received papers from the Tribunal. Mr Ashcroft had suffered a stroke and in view of that and the age of the Respondents, they would request that, if the Tribunal issued an Eviction Order, the date before which it could not be executed should be extended from 30 days to 3 months. They had submitted an application to South Lanarkshire Council, and, because of Mr Ashcroft's health condition, they were listed as high priority for rehousing, but no suitable property had as yet been identified. They hoped to be offered a new-build property, but its completion had been delayed beyond the originally anticipated date of the end of March. Mr Ashcroft could cope with the internal staircase at the Property, but not with the common stairs of a block of flats. At present, having taken advice from Citizens Advice about income maximisation, the Respondents could afford to meet the rent of the Property, but with the rising cost of living, the situation might deteriorate in the future.

Having made their representations to the Tribunal, the Parties and their representatives left the Case Management Discussion, and the Tribunal members considered all the evidence, written and oral, before them.

Reasons for Decision

Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) provides that the Tribunal is to issue an Eviction Order against the tenants under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 4 of Schedule 3 to the Act states that it is an Eviction Ground that the landlord intends to live in the let property and that the Tribunal must find that Ground 4 applies if the landlord intends to occupy the let property as the landlord’s only or principal home for at least three months and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of that fact.

The Tribunal was satisfied that the Applicant intended to live in the Property as her principal home, and the remaining question for the Tribunal to determine was whether it was reasonable to issue an Eviction Order on account of that fact.

The Tribunal noted that the Respondents appeared to wish to leave the Property, partly due to Mr Ashcroft’s health condition and partly due to concern as to whether the rent was affordable for them, now that they are both retired. They had taken all reasonable steps to secure accommodation from South Lanarkshire Council, were regarded by the Council as high priority and were hopeful that they might be given a tenancy of a new-build property when it is completed. The Applicant’s reasons for wishing to move back into the Property were understandable, given the unsatisfactory location of the property in which her daughter and granddaughter were currently living.

Having considered carefully all the evidence, written and oral, before it and the circumstances of both Parties, the Tribunal decided that it would be reasonable to issue an Eviction Order.

The Tribunal’s view was that, on the balance of convenience, the operation of the Eviction Order should be deferred for a period of 3 months, to afford the Respondents the time they had requested to find suitable alternative accommodation. The Tribunal did not consider that this would significantly prejudice the Applicant.

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.

George Clark

Legal Member/Chair

31 January 2023
Date