



Decision with Written 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/23/1704

Re: Property at 27 Carsegreen Avenue, PAISLEY, PA2 8SB (“the Property”)

Parties:

Mr Daniel Lambie, 28 Ross Court, West Lothian, EH55 8HE (“the Applicant”)

Mr John Smith, 27 Carsegreen Avenue, PAISLEY, PA2 8SB (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Introduction

This Case Management Discussion concerned an Application for Eviction in relation to a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The hearing took place by teleconference.

1. Attendance and Representation

The Applicant was in attendance

The Respondent was in attendance.

2. Preliminary Matters

This matter called previously before the First Tier Tribunal (FTT) and was continued to a further Case Management Discussion. The Applicant nor his representatives were present at that hearing.

The Applicant said he had been living with his mother and had left his family home. He did not receive notification of the last hearing and apologised to the Tribunal and Respondent.

There were no other preliminary matters raised.

3. Case Management Discussion Summary.

For the Applicant

The Applicant told the FTT that he required an Eviction Order in order to move back into the property to live there. He explained that his marriage ended at beginning of this year. He served Notice to Leave in February 2023. He has been living in his mother's house for the last 6/7 months. He previously lived at the property but has been renting same for 10 years. Other than the property he rents out he owns the family home that he has left following the marriage breakdown. The Applicant is in full time employment in Glasgow and requires to commute from West Lothian where his mother's address is which is an approximate round trip of 65 miles daily.

The Applicant also explained that he is Welfare Guardian to his older stepson who had global development delay and resides in residential care. He is unable to renew the Welfare Guardianship Order without a permanent address he has been told. The Applicant's younger son is 11 years of ages and he has autism, he resides with the Applicant at the weekend but he is having to sleep on a Z bed in the Applicant's mothers's dining room. The Applicant said that the mortgage for the property has increased by £300 monthly and given the current level of rent there is a monthly shortfall between rent and mortgage of £250.

For the Respondent

The Respondent confirmed his position to the Tribunal that he was still waiting on the Local Authority to allocate a property to him. He was on various lists for housing and had taken proactive steps himself to obtain alternative housing. He has a number of health conditions namely, ischaemic heart disease, unstable angina and has lost sight in his right eye. He is 63 years of age. Since the first hearing he has had no offers of another property yet. He was really sorry for the situation of the Applicant. He explained his health was

degenerative and he has been awarded the adult disability payment. He is currently high priority for re-housing.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. Both parties were present and no material matters of fact were in dispute.**
- 2. The Applicant sought an Order for Eviction on the basis of ground 4, because he intends to live the property.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 11th October 2021. A Notice to Leave was sent to the Respondent on 24th February 2023.**
- 5. The Tribunal was satisfied on balance that the Applicant was in terms of Schedule 3, Part 1, Ground 4 of the 2016 Act intending to reside in the property himself as soon as was possible.**
- 6. The Tribunal was further satisfied on the evidence heard and lodged which was not in dispute that the Applicant had a genuine need and wish to live in the property following a marriage breakdown.**
- 7. The Tribunal found that the requirements of Ground 1 of Schedule 3 to the Act had been met.**
- 8. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 9. The Tribunal noted the Local Authority under the Housing (Scotland) Act 2006, had been notified on 19th April 2023.**
- 10. On the information given to the Tribunal by the Applicant he had experienced a breakdown in his marriage at the beginning of the year. He has had to reside in his mothers' property away from his job and children. His children have additional needs and the property mortgage for the property is now higher than the rental income. The Applicant has nowhere else to reside other than the property. The Respondent has significant physical health and lives alone. He is 63 years of age and priority on the local authority housing list but has not yet been offered alternative housing. The Tribunal found an Order was reasonable on balance in terms of the Coronavirus (Scotland) Act 2020. Any eviction would be subject to a delay under the Cost of Living (Tenant Protection) (Scotland) Act 2022.**
- 11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**
- ~~12. The Tribunal refused the request for expenses against the Respondent in terms of Rule 40.~~**

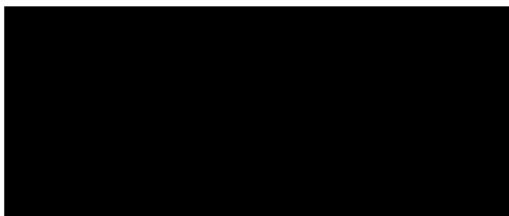
Reasons for Decision

This was a difficult case for the Tribunal to determine in terms of the overriding objective. Both the Applicant and the Respondent had difficult circumstances and

were very kind to respect each other's position. The issue of reasonableness was pertinent to the Tribunal as it was accepted that the Applicant had a genuine need to reside in the property. The Respondent had taken all active steps he could to find alternative housing. On balance, there being no material dispute in fact between parties the Tribunal granted an order for Eviction. The Cost of Living (Tenant Protection) (Scotland) Act 2022 provisions applied.

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

_____**8 November 2023**_____
Date