



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/23/2441

Re: Property at 49H Market Street, Musselburgh, East Lothian, EH21 6PS (“the Property”)

Parties:

Mr Vince Fitzpatrick, 18 Greenfield Park, Musselburgh, East Lothian, EH21 6SX (“the Applicant”)

Mr Ionica Cheptenar, Mrs Cornelia Cheptenar, 49H Market Street, Musselburgh, East Lothian, EH21 6PS (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondents.

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant was present and unrepresented.

The Respondents were both present and unrepresented.

3. Preliminary Matters

The Applicant was asked to confirm that the Notice to Leave had been delivered. He confirmed that he had emailed the Notice and had hand delivered same to the Respondents. The Respondents had signed for receipt and this was in the productions. The Respondents confirmed they accepted service on the 17th February 2023. The Tribunal asked that the Applicant lodge a copy of the Notice to leave email confirmation although the Respondent had confirmed service.

The Tribunal had been sent a copy of the PRT between parties dated 8th June 2022. The Respondent's confirmed acceptance of same.

There were no other preliminary matters raised.

4. Case Management Discussion.

For the Applicant

The Applicant submitted he sought an order for Eviction based on Ground 5, Schedule 3, that his family member required to reside in the property. A Notice to Leave was hand delivered and emailed by him to the Respondents in February 2023 as his step son and his children need alternative accommodation. He said his step son requires to separate from his partner and that at present they are forced to live together which is having an effect on the children involved. The Applicant said that the children are aged 6 years and 3 years of age. The Applicant explained he had one other rental property but this was a long terms rent of over 12 years and was not suitable for his stepson.

The Applicant referred to the Affidavit lodged and statement of his stepson confirming the circumstances and his intention to reside in the property. The property would allow a long term solution for the family and children with a suitable location for school and to allow the parties to separate.

The Applicant said he has a 20 years plus relationship with his stepson and the Applicant also sees the 2 kids here regularly. The property is a 2 bedroom property and the Applicant's stepson is 31 years of age. The Applicant seeks an order under Ground 5.

For the Respondents

The Respondent's confirmed that they were not opposed to the Application. The Respondent's consider the property is too small for the family. They have 3 children, aged 14 years, 12 years and 2 years of age. Two of their children have to share a bedroom but their daughter is nearly 15 years of age and cannot share with his 12 year old son in the circumstances going forward. The Respondent's youngest child who is 2 years old shares their bedroom. They have no health conditions but have found it difficult to secure alternative more suitable accommodation.

The Respondent said that he has made an application with the local authority for alternative housing and both the Respondents and the Applicant have been liaising with the local authority on this. The Respondents also said that they would like to leave the property as soon as they can as they have no space to sleep properly.

Findings in Fact.

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The evidence was not in dispute. Parties were in agreement on the material facts. The Application was not opposed.**
- 2. The Applicant sought an Order for Eviction on the ground that the Applicant in terms of Ground 5, the landlord's family member intends to occupy the property as their only or principal for home for at least 3 months. The Tribunal was satisfied that the Applicant's stepson intended to reside in the property as his principal home. This was not in dispute.**
- 3. The Applicant also sought to satisfy the Tribunal in terms of Ground 5 that it was reasonable to issue an eviction order in terms of the fact his family member sought to reside in the property. The Tribunal was satisfied that it was reasonable that an order for eviction be granted to allow the stepson to reside in the property as he was unable to continue to reside in his current home due to a relationship breakdown which was negatively affecting the children and wider family.**
- 4. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application alongside further legal documents. This was not disputed.**
- 5. There was a PRT in place between parties dated 8th June 2022.**
- 6. A Notice to Leave was sent to the Respondent on 17th February 2023.**
- 7. The Tribunal was satisfied on balance that the Applicant's family member was in terms of Schedule 3, Part 1 Ground 5 of the 2016 Act intending to reside in the property and the circumstances of same were reasonable.**
- 8. The Tribunal found that the requirements of Ground 5 of Part 1, Schedule 3 to the Act had been met.**
- 9. The Tribunal was also 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. There was no challenge to same.**

10. The Tribunal noted the Local Authority under the 2011 had been notified.
11. The Tribunal spent time looking at reasonableness. Whilst the ground was not in dispute the Applicant set out why he required to allow his stepson to reside in the property due to untenable living issues not known at the time the PRT was entered into. The Respondent's sought alternative housing as the property was too small for them and their children. They had struggled to find other housing and had made an application to the local authority. The property has 2 bedrooms and they have 3 children, 2 of which are older children and are male and female. The property is overcrowded and the couple's 2 years old child shares their bedroom. In all the circumstances the Tribunal considered it was reasonable on balance looking at the competing positions that the Applicant be able to have his stepson reside in the property. The Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020. The Respondents did not oppose the Order.
12. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.
13. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.

Reasons for Decision

The Tribunal heard credible evidence of the Applicant regarding his family's member's situation and this was supported by Affidavit evidence. The Respondent's seek alternative accommodation and did not oppose the application as the property is too small. Both parties have been liaising with the local authority to resolve matters. The Tribunal weighed up the circumstances and determined on balance that an order for Eviction was reasonable but would be subject to Cost of Living (Protection for Tenants)(Scotland) Act 2022.

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.

K. Kirk

12th December 2023

Legal Member/Chair

Date