



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 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/21/0812

Re: Property at 419 Kingspark Avenue, Rutherglen, Glasgow, G73 2AS (“the Property”)

Parties:

Mr Thomas Paterson, Flat 0/1, 1 Braids Circle, Paisley, PA2 6HS (“the Applicant”)

Miss Leigh MacCallum, 419 Kingspark Avenue, Rutherglen, Glasgow, G73 2AS (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property be granted.

Background

1. By application received 1 April 2021, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act. Recovery was sought on the basis of Ground 4 of Schedule 3 to the 2016 Act. Supporting documentation was submitted with the application and subsequently in terms of the Regulations.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations dated 24 May 2021. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case

Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. Said notification was served on the Respondent by Sheriff Officer on 1 June 2021. No representations were lodged by the Respondent.

3. A Case Management Discussion (“CMD”) took place by telephone conference call on 5 July 2021, attended by both Tribunal Members and the Applicant’s solicitor, Mr Dominic Coyle of Austin Lafferty solicitors. A detailed Note on the CMD prepared by the Legal Member who dealt with the CMD and a Direction, both dated 5 July 2021, were issued to parties after the CMD. The Tribunal continued the application to an evidential Hearing in order that further evidence could be presented to the Tribunal in terms of the application and to give the Respondent a further opportunity to take part in the proceedings and present any evidence. A Hearing was assigned for 6 September 2021 at 10am, to take place by telephone conference call. The Respondent was notified of same by the Tribunal by Recorded Delivery correspondence which the track and trace system confirms was delivered to the Respondent’s address on 3 August 2021.
4. Neither party responded to the Direction by providing details of any intended witnesses in advance of the Hearing. The Applicant’s solicitor responded to the Direction by lodging an Inventory of Productions, a copy of which was circulated to the Respondent. The Respondent did not respond to the Direction or lodge any documentation with the Tribunal prior to the Hearing.

The Hearing

5. The Hearing took place by telephone conference call on 6 September 2021 at 10am, although the commencement of the Hearing was delayed for 5 minutes to allow the Respondent an opportunity to attend but she did not. The Hearing was attended by both Tribunal Members and the Applicant’s solicitor, Mr Dominic Coyle of Austin Lafferty solicitors.
6. After introductions and introductory remarks by the Legal Member, the Legal Member made reference to the Direction issued after the CMD regarding the matter of witnesses. Mr Coyle confirmed that the Applicant was not in attendance and that he did not intend to call any witnesses to give evidence. He made reference to the Affidavits of the Applicant and Mrs Irene Gow or Paterson lodged as part of the Applicant’s Inventory of Productions, both dated 20 August 2021, and indicated that these constituted the evidence of the Applicant and his wife. The Legal Member advised that it was the same two Tribunal Members today as had attended the CMD so were familiar with the background to the application and had read through all the documentation lodged in support of the application on behalf of the Applicant in response to the CMD Note and Direction issued by the Tribunal after the CMD. Mr Coyle was asked to address the application, paying particular note to the issues identified by the Tribunal at the CMD on which they had requested further evidence.

7. Mr Coyle made reference to the documentation originally submitted in support of the application and the further documentation lodged in response to the Direction. In particular, he made reference to the signed statement of the Applicant (Item 7 of the Inventory) and the Applicant's Affidavit (Item 1 of Inventory) which explain the reason the Applicant requires the Property back for himself and his new wife to live in. The Affidavit also explains some more about the detailed circumstances of the Applicant's decision to let the Respondent, his daughter, live in the Property from December 2019 and why there was no tenancy agreement put in place. Essentially, the Applicant's new partner had not wished to move into the Property at that time, as it had been the marital home of the Applicant and his wife who had died earlier that year. He referred to the Death Certificate (Item 3 of the Inventory). The Applicant's relationship with the Respondent was good and he had no reason to think that this would change. Unfortunately, as detailed in the Affidavits of the Applicant and his new wife (Item 2 of Inventory) the Applicant's relationship with the Respondent is now non-existent, having gone sour. The Applicant now wishes to move back into the Property to live there and has also been given notice by his own current landlady in respect of the rental property in Paisley where he currently lives. He does not own any other properties. Mr Coyle advised that the Respondent has been given the required notice period and that the notice explained the ground on which the Applicant requires the Property back. Mr Coyle also made reference to the communications between his firm and the Respondent (Items 5 and 11-14 inclusive of Inventory) which provide further detail. In addition to satisfying the ground for eviction, Mr Coyle submitted that the additional reasonableness test introduced as a result of Coronavirus is also satisfied, given that the Respondent has been given lengthy notice; that the relevant local authority have been notified of these proceedings in terms of the Respondent's housing requirement; that if eviction is not granted, the Applicant and his wife will themselves be homeless when his current tenancy comes to an end; and given the low rental rate he has been charging the Respondent to live in the Property for a lengthy period of time, that this is now financially unsustainable for him (even if she was paying the rent due).
8. Mr Coyle then answered questions from the Tribunal Members. The Legal Member asked about the request in terms of the Direction for a copy of the notice the Applicant has been served in respect of his current rental property in Paisley which has not been lodged. Mr Coyle explained that the notice served by the Applicant's landlady is not in the proper form and that his firm have been giving the Applicant and his wife advice on that. It may be that a fresh notice will require to be served on them and this is the reason a copy of that notice has not been lodged. Mr Coyle referred to the two Affidavits and confirmed that they verify the circumstances of notice being served on them and that their landlady wanted them out of the Paisley property by the end of September. The Ordinary Member asked if Mr Coyle is aware of whether the Respondent is still living at the Property. Mr Coyle confirmed that the Applicant has driven past the Property and it appears still to be occupied.
9. Mr Coyle did not wish to add anything in summing up, other than to request that the Tribunal grant the eviction order today.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent, who is the daughter of the Applicant, is the tenant of the Property by virtue of an informal tenancy arrangement which commenced on or around 31 December 2019 and in respect of which the rent is £400 per calendar month.
3. The Applicant instructed his solicitors to correspond with the Respondent from in or around July 2020 about the rent arrears which had accrued and his wish to recover the Property and eventually, to serve formal notice on the Respondent.
4. A Notice to Leave dated 17 December 2020, specifying Ground 4 (landlord intends to live in the property) of Schedule 3 to the 2016 Act, was served on the Respondent by Recorded Delivery post, posted 17 December 2020 and delivered 19 December 2020.
5. The date specified in the Notice to Leave as the end of the notice period was 21 March 2021, which gave the requisite 3 months' notice, as required by the changes made to the 2016 Act by virtue of The Coronavirus (Scotland) Act 2020.
6. The Tribunal Application was received on 1 April 2021.
7. The Respondent continues to reside in the Property.
8. The Applicant intends to live in the Property as his only or principal home for at least 3 months.
9. Given all the circumstances of the case, it is reasonable for an eviction order to be granted.

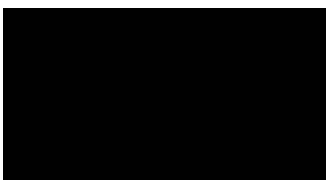
Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the further documentation lodged prior to the Hearing in terms of the Tribunal's Direction and the oral representations made by the Applicant's solicitor at the CMD and Hearing. The Tribunal noted the terms of the Affidavits of the Applicant and his wife, Mrs Irene Gow or Paterson, both dated 20 August 2021, which constituted their evidence. The Tribunal noted that no representations had been made by the Respondent and that she did not attend either the CMD nor the Hearing, having been properly and timeously notified of both. The Tribunal noted that they had no evidence contradicting that of the Applicant and his wife.

2. The Tribunal considered the evidence of the Applicant and his wife contained in the Affidavits to be both credible and reliable, being supported by the other documentation lodged in support of the application.
3. The Tribunal found that the ground of eviction that the landlord intends to live in the let property had been met (Ground 4 of Schedule 3 to the 2016 Act, as amended by the 2020 Act), in that the Tribunal was satisfied that the Applicant intends to occupy the Property as his only or principal home for at least 3 months and that it is reasonable to issue an eviction order on account of those facts. In considering the reasonableness of granting an eviction order in this case, the Tribunal had regard to all the relevant facts and circumstances of the case of which they were aware, pertaining to both parties, as at the date of the Hearing. This included the personal and family circumstances of both parties, the background to the tenancy arrangement and the relationship between the parties, the correspondence between the Applicant's solicitor and the Respondent and between the parties themselves, the length of time said correspondence had been ongoing, the lengthy period of notice the Respondent had had as regards the Applicant's wish to recover the Property, the Applicant's current housing and financial situation, the failure of the Respondent to pay the rent due over a lengthy period and the Respondent not having taken part in these proceedings nor having put forward any contrary information.
4. The Tribunal unanimously determined that an order for recovery of possession of the Property be granted.

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

6 September 2021
Date