



**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/20/2222

Re: Property at 40 Annfield Drive, Arbroath, DD11 2EL (“the Property”)

Parties:

Mr Artyom Gordiyenko, 46A Cairnie Street, Arbroath, DD11 3BL (“the Applicant”)

Mr Norman Campbell Mitchell, Mrs Helen Elizabeth Mitchell, 40 Annfield Drive, Arbroath, DD11 2EL (“the Respondents”)

Tribunal Members:

Karen Kirk (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an eviction order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

In attendance

1. Mrs Lori Beattie, Wardhaugh Property, 155 High Street, Arbroath, DD11 1DR attended on behalf of the Applicant.
2. The Applicant was also in attendance.
3. The Applicant’s partner, Paige Campbell attended as a witness.
4. Both Respondents were present and Mr Norman Campbell conducted the case for them both.

Background

5. This Hearing was a Hearing fixed in terms of Rule 24 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. It took place by teleconference due to the Covid-19 pandemic.

6. This Application has first called on the 6th January 2021 and the Applicant was not present. The Applicant's representative sought to rely for evidence purposes on a letter lodged from the Applicant dated 4th November 2020. The Applicant's representative was unable to set out the position in detail regarding the Applicant and his circumstances.
7. The Respondents at the Hearing explained they were trying their outmost to obtain alternative accommodation but are still waiting due to issues concerning the pandemic. The Respondent, Mr Mitchell advised that he was in poor health and had had 2 heart attacks and hospital also confirmed he is at risk of a stroke.
8. The Tribunal in order to determine the application fairly in regards the overriding objective and in regards to reasonableness and the interests of justice considered that additional evidence was necessary for the Applicant in order to proceed to hearing evidence in the Application. The Tribunal accordingly adjourned the hearing to this Hearing on 10th February at 10am in order to allow the Applicant to prepare for the hearing and consider what further evidence could be given to the Tribunal either before or at the next Hearing.
9. At the Hearing on 10th February both the Applicant and his partner were present to give evidence.

Summary of Evidence

10. Artyom Gordiyenko – the Applicant.

The Applicant told the Tribunal that the matter first started when his mortgage adviser said he could not change his mortgage for the property to a buy to let and it was not his intention to rent the property long term. He told the Tribunal that his partner was pregnant and his current property was small, had little heating and was unsuitable for a baby. The Applicant said further that he was losing money on the property due to tax implications. He also told the Tribunal about his partner having mobility issues related to pregnancy and that their current home contained stairs.

The Applicant said he would love to move back to the property. The Applicant said further he had obtained the property when he was young and five years ago decided to rent it out as he was working away a lot. The mortgage he said was amended to a consent to lease basis but his circumstances have now changed. He said his current home was a standard two bedroom flat and the property he wanted to move into was a two bedroom semi detached house.

11. Paige Campbell

Ms Campbell confirmed to the Tribunal that she was in the late stages of pregnancy and was now suffering from anxiety and depression with “*everything going on*”. She said from a pregnancy point of view her condition was worse and she had pelvic and back pain. Ms Campbell said their current property was not suitable and it was to struggle on the stairs. She said the property was a maisonette and she was struggling with that. Ms Campbell said she wished to move to the property as it is a two bedroom semi detached house and she would have a better quality of life. She also spoke financially about maternity leave and the new quarantine rules which may place a financial burden on the family.

12. Mr Norman Mitchell – the Respondent

The Respondent said that over the last fifteen weeks he has been in hospital with heart attacks and related issues three times and he is waiting for surgery on his heart. He said this may need to be done as an emergency if he has another heart attack. The respondent said further he has applied to housing associations and nothing is moving at the minute due to the pandemic. He said him and his wife are trying as hard as they can to get suitable housing. The Respondent said he has applied for 12 properties and are trying everything they can to get another property.

The Respondent said that he has maximum points for social housing and a offer for a new house could happen this week and they are ready to go. Mr Mitchell said the property was beautiful and that when they took out the lease they knew the Applicant would come back or want to sell it. The Respondent acknowledged he had had private tenancies suggested but explained he was unable to move in to a private house due to his health.

Submissions

13. For the Applicant

The Applicant sought an eviction order and submitted that it may further support the Respondent’s position in securing accomodation. The health needs and pregnancy of the Applicant’s partner was submitted and referred to.

14. For the Respondent

The Respondent submitted that if the Tribunal made an eviction decision they will move as soon as they can.

Findings in Fact

15. Parties entered into a Lease in 2018. This lease is a Private Residential Tenancy and concerns a two bedroom semi-detached house with a garden owned by the Applicant.
16. The Applicant resides in his own property with his pregnant partner and this property is a two bedroom maisonette flat without a garden.
17. The Applicant's partner is due to have their baby on 31st March 2021.
18. The Applicant sent a valid Notice to Leave to the Respondents on 15th July 2020 on the grounds he intends to live in the property.
19. The Applicant also served the relevant Notice upon the Local Authority.
20. The Respondent Mr Mitchell has over the last fifteen weeks been suffering from significant ill health and has been unable to secure suitable accommodation.
21. The Respondents intend to leave the property when they can and have indicated this to the Applicant.
22. The Respondents have been actively trying to obtain social housing since they were served with the Notice to Leave.
23. The Applicant due to a change in circumstances and the pregnancy of his partner intends to reside in the property as his principle home.

Reasons for Decision

24. The Tribunal was satisfied of the credibility of all parties who gave evidence. The Tribunal gave detailed oral reasons for their decision to the parties and informed them of this after the Hearing. The Tribunal noted the Applicant at times provided irrelevant evidence such as regarding his mortgage or his tax liabilities overall but that the Tribunal was satisfied on balance in terms of Schedule 3, Part 1 of the Act at Ground 4(1) that the Applicant intends to live in the property as his principal home. The Tribunal were also satisfied that the Respondent was credible in his evidence and that the pandemic has not helped either party. The Tribunal confirmed to parties about the current hold on Evictions due to the pandemic and referred them to the various provisions. Accordingly however Ground 4 in part 1, Schedule 3 of the Act was established and the Tribunal granted an eviction order.

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.

Karen Kirk

10th February 2021

Legal Member/Chair

Date

