



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/22/0519

Property : 23 Blackthorn Avenue, Lenzie, Glasgow G66 4DE (“Property”)

Parties:

Michael Downie, 13A Lisnamuck Road, Blackhill, Coleraine BT51 4HN (“Applicant”)

Bellus Lettings, 199A Kirkintilloch Road, Glasgow G64 2RH (“Applicant’s Representative”)

Ruth Macbride, 23 Blackthorn Avenue, Lenzie, Glasgow G66 4DE (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 22 February 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 16 November 2021 ("Notice to Leave"); copy email from the Applicant’s Representative to the Respondent dated 16 November 2021 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 22 February 2022; copy affidavit signed by Roisin Maria Downie stating her intention to live in the Property as her principal home for at least 3 months; copy letter from Roisin Downie and Michelle Downie dated 21 April 2022 stating that they owned the Property, the Applicant was the registered landlord for the Property and they authorised the Tribunal to communicate with the Applicant regarding the eviction process and sheriff officer's execution of service certifying service of the

Application on the Respondent on 27 October 2022. The Tribunal had sight of the title to the Property which was in the name of Roisin Maria Downie and Denise Michelle Downie.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 30 November 2022 by teleconference. Ryan Hassan of the Applicant's Representative was in attendance. The Respondent was also in attendance.

The Tribunal noted that title to the Property was held by Roisin and Denise Downie and the landlord in terms of the tenancy agreement was the Applicant, Michael Downie who was also the registered landlord. The Tribunal asked if Michael Downie was therefore the agent for the proprietors. Mr Hassan confirmed that was the case. The Tribunal noted that the ground for eviction relied upon in the Notice to Leave was ground 5 and that perhaps the ground for eviction should have been ground 4. In any event the Tribunal noted that both grounds required a notice period of 84 days.

Mr Hassan said that Roisin Downie intends to live in the Property. He said he thought she had worked abroad and had now moved back to Scotland. He said that she was presently living with her father, the Applicant in Bearsden. He said that the Applicant had originally lived in Coleraine but had moved to Bearsden.

The Respondent told the Tribunal that she did not oppose the application. She said that she lived in the Property with her partner and one year old daughter. She said that she had enquired about private lets but the market was very competitive. She said she had been in touch with the local authority who had said they would deal with her application to be housed 56 days before an eviction date. She said she understood that she would probably be offered temporary accommodation.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 22 February 2019 ("Tenancy Agreement").
2. The Notice to Leave dated 16 November 2021 was issued by email 16 November 2021. It stated that an application for an eviction order would not be submitted to the Tribunal before 21 February 2022.
3. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.

4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 22 February 2022.
5. Notice of the date of the case management discussion had been given to the Respondent on 27 October 2022.
6. The Applicant's daughter, Roisin Downie intends to occupy the Property as her only or principal home for at least 3 months.

Reasons for the Decision

The Tribunal considered whether to grant an eviction order. In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies, and it is reasonable to grant the order. In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 5 which is that a member of the landlord's family intends to live in the property. In light of the title to the Property being in the name of Roisin and Maria Downie, the correct ground for eviction was possibly ground 4 which was subject to the same notice period as ground 5. In those circumstances, any error in the Notice to Leave did not affect the effect of the notice as set out in section 73 of the Act.

The Applicant had lodged an affidavit from his daughter, Roisin Downie, in which she stated that she intended to live in the Property for more than 3 months. The Respondent did not oppose the application and had taken steps to obtain alternative accommodation. In all of the circumstances the Tribunal determined that it was reasonable to make an Order for possession of the Property in terms of Section 51 of the Act but to delay execution of the Order for a period of 60 days rather than 30 days as that would accord with the time frame provided by the local authority to the Respondent for processing her homeless person application.

Decision

The Tribunal grants an order for possession of the Property.

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.

J Devine

Legal Member

30 November 2022