

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1430

Re: Property at 5 Sherbrooke Gardens, Pollokshields, Glasgow, G41 4HU (“the Property”)

Parties:

Ms Rabinder (also known as Guddi) Sanhu, 25 Dalziel Drive, Glasgow, G41 4JA (“the Applicant”)

Manal Fouani, Mohannad Fayad, 5 Sherbrooke Gardens, Pollokshields, Glasgow, G41 4HU (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Melanie Booth (Ordinary Member)

Decision

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

Background

1. An application dated 13 May 2022 was submitted to the Tribunal in terms of Rule 109 of the Chamber Rules being an application for a Private Residential Tenancy Eviction Order.
2. Along with the application form was lodged a copy of the Notice to Leave.
3. The Tribunal wrote to the Applicant’s solicitor on 7 June 2022 seeking further information. They sought proof of section 11 notice on the local authority, proof of service of the Notice to Leave and evidence in support of the eviction ground stated such as an affidavit from the Landlord.

4. The Applicant's representative replied by email dated 1 August 2022 with proof of service of the notices and an affidavit from the Landlord.
5. The application was accepted and assigned to a case management discussion today.
6. Notice of the application and the case management discussion was served on the Respondents. They were advised that they were required to attend the case management discussion and that any written representations required to be lodged with the Tribunal by 18 October 2022. No written representations have been received.
7. The applicant's agents lodged an inventory of productions on 21 October 2022 comprising a copy of the tenancy agreement, the section 11 notice, proof of service of the section 11 notice, the notice to leave, proof of service of the notice to leave and affidavit of applicant.
8. This morning an email was received by the Tribunal from the Respondents requesting that the case management discussion be cancelled as they intended moving from the Property.
9. The Respondents were advised that it was only the Applicant who could withdraw an application and they should attend at the case management discussion.

The Case Management Discussion

10. The case management discussion took place this afternoon by teleconference. Mr Coyle attended on behalf of the Applicant and Ms Fouani attended on behalf of both Respondents. She advised that her English was not great and asked that her 20 year old son, Hadi Fayad be able to speak on the Respondents' behalf.
11. Mr Coyle advised that the Applicant intended to live in the Property and was at imminent risk of being made homeless herself due to her sister selling the property that she currently residing as per the affidavit lodged. The Tribunal asked about service of the Notice to Leave and the fact that it appeared to have been served jointly whereas the Tribunal would have preferred to see each tenant being served notice separately. Mr Coyle advised there didn't appear to be any issue with notice having been received. The Tribunal notice that, while email service was agreed to in the tenancy agreement, the same email address had been stated twice on the tenancy agreement.
12. Mr Coyle was not in a position to give any further information in respect of the sale of the Property in which the Applicant was currently residing. The Tribunal referred to the final paragraph of the letter from Castle Residential of 28 September 2021 which said

“Castle will handle the eviction process and we will be re-advertising the Property so will require to book viewings in with yourself at a time that is convenient to you. As such, contact with you would be ideal in order to progress this amicably”

Mr Coyle was unable to give any further information on this but suggested this may have been a standard paragraph which Castle Residential had omitted to remove. His client had been advised of the consequences of pursuing an eviction order under the wrong ground.

13. For the Respondents Hadi advised that they had originally wished to purchase the Property and had agreed this with the Applicant who then changed her mind. They had been looking for an alternative property since the Notice to Leave had been served. They had made renovations to the Property. They were in the process of moving out of the Property and were moving to another private rental property. They would be fully moved by next week. He advised that he lived with his mum, her husband and his two sisters, age 22 and 15, at the Property. None of them suffered from a disability or illness.

Findings in Fact

14. – Parties had entered into a tenancy agreement from 22 June 2019
- Notice to Leave had been served on the Respondents by email on 28 September 2021 on the ground that the Landlord intended to live in the Property

Reasons for Decision

15. The Tribunal took into account the papers and evidence before it and the oral submissions of Mr Coyle and Mr Fayad at the case management discussion. Had the Respondents not secured alternative accommodation then the application would have been sent to a full hearing on evidence. The Respondents were in the process of moving out of the Property to an alternative private rental property. In all the circumstances, it seemed reasonable for the repossession order to be granted.

Decision

16. The Tribunal granted a repossession order for 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.

4 November 2022

Legal Member: Anne Mathie

Date