



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Scotland (“Act”) 2016

Chamber Ref: FTS/HPC/EV/23/1927

Property: Flat 1/2, 11 Keir Street, Glasgow, G41 2NP

Parties:

Mr Amjid Mahmood and Mrs Waheeda Mahmood, residing at 11 Parkmeadow Way, Glasgow, G53 7ZF (“the Applicants”), and

Mr Muhammad Arshad, residing at Flat 1/2, 11 Keir Street, Glasgow, G41 2NP (“the Respondent”)

Tribunal Members:

Mr Andrew Cowan (Legal Member) and Mrs Helen Barclay (Ordinary Member)

Decision:

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

Background

1. This is an application by the Applicants for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicants to the Respondent commencing on 1st April 2018.
2. The application was lodged with the Tribunal on 12 June 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*.

3. The application relied upon a Notice to Leave dated 5th January 2023, issued in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and served upon the Respondent by email, all in accordance with the provisions of the PRT. The Notice relied upon Ground 5 of Schedule 3 Part 1 of the 2016 Act, as a member of the Applicants' family intends to occupy the let property as that person's only or principal home for at least 3 months. The Notice to Leave intimated that an application to the Tribunal would not be made before 2nd April 2023.
4. The application papers included a written statement made by the Applicants' son, Mr Mohammed Mahmood, which confirmed his intention to live in the Property, together with a written statement from the Applicants which confirmed their intention to permit their son to occupy the Property.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow District Council was included in the application papers.

The Hearing

6. The matter called for a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10th October 2023 at 1000.
7. The Applicants were represented on the call by their representative, Mr Mustafa Baig of The Professional Consultancy. They were also represented on the call by their letting agent, Mr Atif Ahmed.
8. The Respondent did not join the conference call. The Tribunal had sight of the execution of service of the application by sheriff officers upon the Respondent, dated 1st September 2023, and was satisfied that the Respondent had received appropriate notice in terms of rule 24. The Tribunal was satisfied that it was fair to proceed in their absence in terms of rule 29.
9. At the CMD, the Applicants' representative confirmed that the application for eviction was insisted upon. It was explained to the Tribunal that the Applicants' son had recently married and now also had a child. The Applicants' son wished to move into the Property as his principal home. The Applicant's agent confirmed the Applicants continue to seek an order for eviction notwithstanding that such an eviction order will be suspended in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022.
10. We asked the Applicants' representative to explain why they considered it was reasonable to grant the order sought. We were informed that:
 - a. The Respondent lives at the Property with his wife and two children. The children are both over the age of 18.
 - b. The Respondent has leased the Property from the Applicants from 2013. The Respondent was originally granted a tenancy that ended in 2018. At

that time the parties entered a Private Residential Tenancy and the Respondent, and his family, continued to occupy the Property in terms of that new agreement.

- c. Throughout the period of the tenancies between the Parties the Respondent has known and understood that the Applicants intended to allow their son to move into the Property at a future date when his circumstances required him to have his own accommodation.
- d. The Applicants' son now wishes to move into the Property as his principal home.
- e. The Respondent has confirmed to the Applicants, and their representatives, that they are actively seeking to buy or let alternative property for the Respondent and his family. Despite the terms of the Notice to Leave served upon the Respondent, he has failed to vacate the Property.
- f. The Respondent has confirmed to the Applicants, and their representatives, that the Respondent understands the nature of the Application and does not seek to oppose the eviction order. The Respondent understands that he cannot be considered for rehousing by a social housing provider unless his current tenancy has been terminated.

Findings in Fact

11. On 1st April 2018 Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on that date ("the Tenancy").
12. Notice to Leave was emailed to the Respondent on 6th January 2023.
13. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 5 of Schedule 3 part 1 of the 2016 Act on 12th June 2023.
14. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on the Applicants' behalf.
15. The Applicants' son, Mr Mohammed Mahmood, intends to occupy the Property as his only or principal home for at least 3 months.
16. It is reasonable to grant an order for the eviction of the Respondent from the Property.

Reasons for Decision

17. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal.
18. The application is in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the

Notice to Leave had been competently drafted and served upon the Respondent

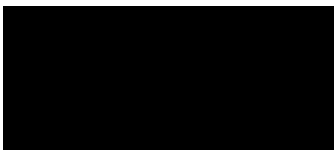
19. Ground 5 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and
 - (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
20. We were satisfied on the evidence that the Applicants' son has a genuine intention to reside in the property for at least 3 months and that Ground 5 of Schedule 3 to the 2016 Act has been established.
21. We were also satisfied on the evidence it was reasonable to issue an eviction order. The Respondent has been aware for a long period that the Applicant's intended that their son would seek to occupy the Property. The provisions of cost of Living (Tenant Protection) (Scotland) Act 2022 mean that an eviction order granted by the Tribunal is not immediately capable of enforcement. The Respondent will have a period in which to secure alternative housing. The Respondent does not wish to oppose the application as he considers an order which requires him to vacate the Property will support her own application for alternative accommodation with the local authority. The Tribunal are satisfied that it is reasonable to grant an order for eviction.

Decision

31. In all circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 5 of Schedule 3 of that Act, suspended in terms of the 2022 Act and the appeal period of this Decision

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.



Andrew Cowan

10th October 2023

Legal Member/Chair

Date

