



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/20/2562

Re: Property at 57 Cumbrae Drive, Motherwell, ML1 3LJ (“the Property”)

Parties:

Mr Andrew McMahon residing at 20 Eastfield Road, Witney, Oxfordshire, OX28 1HN, and Mrs Samantha MacLeod, residing at 65 Viewpark Road, Motherwell, ML1 3H (“the Applicants”)

Miss Gillian Stobie, Mr Liam Stobie, Mr John Vogwell, all residing at 57 Cumbrae Drive, Motherwell, ML1 3LJ and Mr Gary Stobie, residing at 1 Plested Court, Aylesbury, Buckinghamshire HP22 5UB (“the Respondents”)

Tribunal Members:

Jim Bauld (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted

Background

1. Three separate applications had been lodged by the applicants. Two applications seek an eviction order in respect of a private residential tenancy (FTS/HPC/EV/20/2562 and FTS/HPC/EV/21/0280). The third application seeks an order for payment of rent arrears arising from that tenancy (FTS/HPC/CV/21/0281)
2. By application dated 3 December 2020 the applicants sought an eviction order against the respondents on the basis that the landlord intended to live in the let property. It was given reference number FTS/HPC/CV/20/2562

3. On 17 February 2021 this application was accepted by the tribunal and referred for determination by the tribunal along with the two other applications
4. It was decided that all three applications should also have CMDs set to take place on 5 March 2021 and that all three applications would be considered together
5. The Case Management Discussion (CMD) took place on 5 March 2021 via telephone case conference. The applicant Samantha MacLeod was present and was represented by her letting agent, Ms Vikki McGuire, Jewel Homes Limited, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF. Mr McMahon did not attend. Only one of the Respondents attended, namely Mrs Gillian Stobie. She confirmed that Liam Stobie and Gary Stobie were her sons and that John Vogwell was her husband
6. The tribunal decided that all three applications should be adjourned and that a further case management discussion in respect of all three applications will take place on 23 April 2021 at 10 am. Full reasons for the adjournment are set out in the Note issued after the CMD

The adjourned Case Management Discussion

7. The adjourned Case Management Discussion (CMD) took place on 23 April 2021 via telephone case conference. The applicant Samantha MacLeod was present and was again represented by her letting agent, Ms Vikki McGuire, of Jewel Homes Limited. Mr McMahon did not attend. None of the respondents attended nor were they represented. The tribunal was satisfied that all had been given appropriate notice of the date and time of the CMD.
8. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions with regard to the application and the applicant and the applicant's representative confirmed that they wished the tribunal to grant the eviction order sought in the application

Findings in Fact

9. The applicants and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which commenced on 5 April 2019.
10. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. ("the Act")
11. The agreed monthly rental was £500.

12. On 1 September 2020 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served by email upon the respondents and became effective on 3 December 2020
13. The notice informed the respondents that the landlord wished to seek recovery of possession using the provisions of the Act.
14. The notice was correctly drafted and gave appropriate periods of notice as required by law.
15. The notice set out a ground contained within schedule 3 of the Act, namely ground 4 that the landlord intended to live in the let property.

Reasons for Decision

16. The order for possession was sought by the landlord based on a ground specified in the Act and properly narrated in the notice served upon the tenant.
17. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground
18. When the application was lodged, an affidavit dated 2 December 2020 was provided which had been prepared and signed by Mrs Samantha Macleod, one of the landlords. In that affidavit she indicated that she was the owner of the property and that it was currently let in terms of a private residential tenancy. She indicated she wished to bring the tenancy to an end because she intended to live in the property.
19. The tribunal was also provided with evidence that Mrs McLeod had recently sold her previous residence at 12 Katrine Place Cambuslang Glasgow. The sale of that property had been completed on 5 October 2020.
20. After that the sale had been completed it was the applicant's intention to move into the property at 57 Cumbrae Drive. She was not able to do so because the tenants had not removed.
21. In the intervening period she and her husband and young daughter had moved in to share a flat with her mother at the 65 Viewpark Road Motherwell. This flat only has two bedrooms and is overcrowded.
22. The applicant informed the tribunal that she intends to purchase another new build property but that will not be ready until November 2021 at the earliest and may even not be ready then. She has not yet formally concluded missives to purchase this property. Accordingly it was her intention to move into the property at 57 Cumbrae Drive and that she and her family would live there for a period of at least three months after the tenants have removed.

23. The applicant also indicated that the current residents of 57 Cumber Drive are all adults. So far as she is aware the two male occupants are both in full-time employment. There are no young children within the property. There is no one with any disability or any health problem which would prevent them obtaining alternative accommodation if the eviction order was granted.
24. The tribunal accepted the unchallenged evidence of the applicant regarding her intention
25. The ground for eviction was accordingly established
26. The ground for eviction under which this application was made is the ground contained in paragraph 4 of schedule 3 of the 2016 Act. The ground is that the landlord intends to live in the let property. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
27. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact
28. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
29. In this case the tribunal finds that it is reasonable to grant the order.
30. The landlord is currently living in overcrowded accommodation which is unsuitable for her and her family, including her young daughter. It was suggested by the landlord's representative that the tenants have indicated they will move as soon as they can find another house. The house is currently occupied by three of the tenants who are all adults. There are no young children within the property.
31. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Jim Bauld



30/04/2021

Legal Member/Chair

Date