



The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/2277

Re: Property at West Wing, Wintonfield House, New Winton, Tranent, EH33 2NN (“the Property”)

Parties:

Mrs Marjorie Telford, Wintonfield House, New Winton, EH33 2NN (“the Applicant”)

Mr Nerijus Idas, West Wing, Wintonfield House, New Winton, Tranent, EH33 2NN (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory grounds being established and the statutory procedures having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 10 July 2023 and 15 September 2023 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties;
 - ii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council being the relevant local authority and

- iv) copy Offer to purchase the Property and the greater part of the house of which the Property forms part.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 8 January 2024 at 10.00 by telephone conference. The CMD was intimated to the Parties and, in particular, to the Respondent by Sheriff Officer service on 13 November 2023.

CMD

4. The CMD took place on 8 January 2024 at 10.00. Both Parties were present and both were unrepresented.
5. Mrs. Telford, the Applicant, confirmed that the Order is sought. She expanded further on reasons for selling and advised that she is almost eighty years old and finds the cost of running the whole house of which the Property forms part unaffordable and that the extent of the garden grounds and orchard are too great for her to manage on her own. She explained that she is widowed and that her income is a small pension together with her state pension and the rent from the Property. She stated that the whole property is now a burden on her. In response to the Tribunal's questions, Mrs. Telford explained that the Property is a separate accommodation unit from the main house in which she resides and that the two residences had been marketed together. She stated that it is not feasible to split the two for sale and that her buyer wished to purchase the whole extent with vacant possession.
6. Mr. Idas, the Respondent, stated that he did not formally oppose the Application but had been unable to secure alternative accommodation and so remained in the Property. He stated that he lived alone and that he had been in contact with the local authority for advice and assistance on homelessness but they are not able to offer anything until the Order is granted.

Findings in Fact

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) The Property forms part of a larger residential property;
 - ii) The Property is self-contained and is let as a tenancy separate from the larger residential property in which the Applicant resides;
 - iii) There is a private residential tenancy of the Property between the Parties which began on 20 July 2021;
 - iv) The Applicant intends to sell the larger residential property including the Property due to her age and limited financial means;
 - v) The Applicant has already marketed the larger residential property including the Property has received a formal Offer from a buyer;
 - vi) The buyer requires vacant possession to proceed with the purchase;
 - vii) The correct statutory procedures have been carried out;
 - viii) The Respondent is a single person and has not been able to source alternative accommodation and

- ix) The Respondent does not formally oppose the Application but has no alternative accommodation in which to reside and so continues to reside in the Property.

Issue for the Tribunal

- 8. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *“It is an eviction ground that the landlord intends to sell the let property. (2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it and (c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”*
- 9. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

- 10. The Tribunal had regard to all the information before it and to its Findings in Fact.
- 11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
- 12. The Tribunal had regard to the facts that the Applicant intends to sell the Property due to her personal circumstances and that she finds the Property and the larger residential property a burden both in terms of management and finances. The Tribunal had regard to the Respondent’s circumstances and took the view that the homelessness legislation provides a safety net for him. Further, the effect of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is such that any Order cannot be enforced until 31 March 2024 and so the Respondent has a significant period of time to secure housing. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
- 13. This decision is unanimous.

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.



Legal Member/Chair

08/01/2024

Date