



Decision 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/23/2831

Re: Property at 136 Robroyston Road, Robroyston, G33 1JJ (“the Property”)

Parties:

Mrs Pauline Carroll, 2 McVey Place, Steps, Glasgow, G33 6NX (“the Applicant”)

Miss Linda Carey, 136 Robroyston Road, Robroyston, G33 1JJ (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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. By application dated 18 August 2023, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 6 October 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 12 January 2024 and appropriate intimation of that hearing was given to all parties

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 12 January 2024 via telephone case conference. The applicant did not attend the CMD but was represented by her letting agent Ms Lorraine Brennan from 1-2-Let(Lettings and

Sales) Limited, Glasgow. The respondent took part in the telephone case conference call

4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties regarding the application.

Summary of initial discussions at CMD relating to matters agreed by parties

6. The tribunal noted that the eviction was sought under and in terms of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016
7. That ground is currently in the following terms.

Landlord intends to sell

1(1)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.

(3)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a)a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market

8. The tribunal explained to the parties that there were three elements to the ground. Firstly that the landlord was entitled to sell the property. Secondly, that the landlord intended to sell the property. Finally that the tribunal finds it reasonable to grant the order.

9. On questioning the parties, it was clear that a number of factual issues were agreed.
10. There was no dispute that the parties were the landlord and tenant of a tenancy of the property which was a private residential tenancy under and in terms of the 2016 Act.
11. It was agreed that a Notice to Leave had been served on the respondent indicating that the applicants intended to seek an eviction order based on ground 1.
12. It was clear that they both agreed that the landlord is entitled to sell the property.
13. The applicant explained that she intends to sell the property and has intended to do so for a considerable period of time. The respondent on being questioned regarding this aspect of the case conceded that she accepted that the applicants have the intention to sell.
14. Therefore, the only matter which the tribunal required to address was whether or not it was reasonable to grant the eviction order

Agreed findings in fact arising from initial discussions

15. The Applicant is the registered owners of the property .
16. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 September 2020
17. The tenancy was a private residential tenancy in terms of the Act.
18. The agreed monthly rental was £650.
19. On 22 May 2023 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and Notice became effective on 17 August 2023. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
20. The applicant is entitled to sell the property

Discussions at CMD

21. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the that the landlord intends to sell 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.

22. 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
23. The only matter to be determined in this application is whether it is reasonable to grant the order.
24. The applicant intends to sell the property at market value or at least put it up for sale, within 3 months of the tenant ceasing to occupy.
25. The landlord's representative indicated that the landlord wished to sell the property and had wished to do so for a considerable period of time. She is currently experiencing some financial difficulties and wishes to sell the property. It was indicated that the mortgage payments of the property have recently increased significantly and the landlord is now struggling to meet those payments.
26. It was conceded that the landlord had not used the ground for eviction where the tribunal can grant an order if a land wishes to sell to alleviate financial hardship.
27. The landlord's representative had also lodged a rent statement showing that the tenant was also in rent arrears which at the date of the hearing amounted to £1153.28. Again, it was conceded that the eviction application was not based on the relevant ground within the Act where the tribunal can grant eviction orders if a tenant is in rent arrears
28. The tenant indicated that she resided at the property with her three children. She has a son aged 7, a daughter aged 3 and a new-born daughter aged 4 months. Since receiving the notice to leave, she has been trying to find other accommodation. Indeed, she indicated she has been trying to find alternative accommodation for 18 months. The property is a two bedroom property and she is looking to obtain a larger property to accommodate her family. Her two older children currently share one bedroom and the baby sleeps in the other bedroom with the respondent.
29. She has registered with various local housing associations but has yet received no offers of accommodation. She has now engaged with the local council's homelessness prevention team and has been given certain advice by a caseworker relating to her housing applications. She has been told that the council will only deal with her as a priority if and when an eviction order is granted and she is within four weeks of actually being evicted.
30. She has attempted to obtain legal advice from bodies such as Shelter Scotland and the citizens advice bureau but has found it difficult to obtain appointments.

31. She confirmed that at present, she has no alternative accommodation available to her. She indicated that there are no significant health issues affecting her or any of her children although she mentioned that her son has some ongoing involvement with the CAMS team
32. On being questioned with regard to the rent arrears, she conceded that since August 2023 she has had some difficulties in meeting the rent. She described it as “being in a bit of a pickle”. Some rent payments are now being made directly from benefits and payments of £598.56 were paid directly to the landlord on both 18 November 2023 and 18 December 2023. She explained that she had obtained some money at the end of November to deal with the rent arrears but had used the money for other purposes.
33. The respondent indicated that she had no particular reason to remain in the property. There were no significant family connections to the area, nor was she in receipt of any family support within the area. She had provided the tribunal with a “correspondence” address which she indicated was her aunt’s home. She lives reasonably close to her. She confirmed that she could not go and live with the aunt. She considered that if the eviction order was to be granted, then it would assist her in her attempts to obtain more appropriate accommodation for herself and her family.

Decision

34. The order for possession was sought by the landlord on a ground specified in the 2016 Act and properly narrated in the notice served upon the tenant.
35. 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.
36. The tribunal accepted the unchallenged evidence of the landlord that she intends to sell the property.
37. The ground for eviction was accordingly established.
38. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the landlord intends to sell 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.

39. 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
40. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. 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. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

41. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
42. The tribunal finds that it is reasonable to grant the order.
43. The tribunal accepts that the landlord is entitled to sell the property and wishes to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. However, the tribunal accepts that the tenant is generally not opposed to the sale of the property and is willing to leave the property once she has obtained alternative accommodation. The respondent has sought assistance from the local council and has been told that she will be fully assisted in obtaining alternative accommodation only when an eviction order is granted and she faces actual homelessness
44. The current property is unsuitable in size for the respondent and her family. She requires a larger property and will not be able to obtain such a property without assistance from the relevant authorities. The council's homelessness prevention team have effectively advised the respondent that she will not obtain that assistance unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain more suitable accommodation for herself and her children.

45. 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 the 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.

J Bauld

Legal Member/Chair

Date

12 January 2024