



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/23/3458

Re: Property at Flat 2/1 11 Napier Drive, Glasgow, G51 2LP (“the Property”)

Parties:

Mr Alisdair McKay and Mrs Margaret Clare McKay, 2 Stuart Street, Ardersier, Inverness, IV2 7QL (“the Applicants”)

Miss Nicola Cantrill and Mr Martin Esler, Flat 2/1 11 Napier Drive, Glasgow, G51 2LP (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and Ahsan Khan (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted against the tenant in respect of the Property.

Background

1. On 27 September, the Applicants submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 14 November 2023, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by teleconference on 28 February 2024.

The case management discussion

4. The Applicants were in attendance.
5. The Respondents were not present and the tribunal noted that the arrangements for the case management discussion had been intimated to the Respondents by Sheriff Officer on 15 January 2024.
6. Mr McKay said that the Respondents had sent an email stating that they would leave the Property in the middle of March but he said that he had no confidence that this would actually occur because the Respondents had made various undertakings in the past and had not kept them.
7. The Legal Member explained the purpose of a case management discussion. Mr McKay invited the tribunal to determine the matter without a Hearing and to issue an eviction order. Such an order would be under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 1, Part 1 of Schedule 3 of the 2016 Act have been met. Mr McKay said that he had no other evidence to submit to support his application and that a Hearing would therefore not be necessary.
8. Findings in Fact
 - (i) The Applicants and the Respondents entered into a private residential tenancy agreement in respect of the Property on 30 September 2023.
 - (ii) The monthly rent currently due under the private residential tenancy is £575.

9. Finding in Fact and Law

The Applicant intends to sell the Property.

10. Documents before Tribunal

- (i) Private residential tenancy agreement dated 30 October 2020.
- (ii) Copy Notice to Leave dated 27 December 2022.
- (iii) Email to the Applicants from Messrs Munro and Noble, solicitors dated 21 March 2023.
- (iv) Copy Section 11 intimation to local authority dated 27 September 2023.
- (v) Title Sheet for the Property GLA176692

11. The Law

Section 51 of the 2016 Act as amended:

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 1, Part 1 of Schedule 3 of the 2016 Act (as amended)

Let property required for another purpose

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.

Discussion

12. Mr McKay said that he and his wife had decided to sell the Property. He explained that it had originally been used by his daughter when she had been studying in Glasgow and, when she no longer required it, had been let to the Respondents. He said that he lives in Inverness and that he had found the experience of letting to the Respondents had been frustrating because of their

failure to pay rent. He explained that there are currently arrears of rent of around £7000 and that he has an order from the Tribunal in respect of around £4000.

13. Mr McKay said that the experience with non - payment of rent had led to he and his wife deciding to get out of the rental market and, in his words, "to do other things with his money." Mr McKay said that he had another rental property in Inverness and that, when it becomes vacant, it is his intention to sell.
14. Mr McKay said that the Respondents have two children aged seven and two. He said that the Respondents are settled in the community and are members of their local bowling club. He said that Ms Cantrill works for the Health Board and that Mr Esler is a motor mechanic but he does not know if he is currently working.
15. Mr McKay said that there are arrears of rent but that this was not in itself the reason for them seeking recovery of the Property. He said that non- payment of rent had added to their desire to cease to be landlords in Glasgow.
16. Mr McKay said that he could not do much about selling the Property until he had vacant possession and he knew what work required to be done before marketing it. He referred the tribunal to the exchange of emails which he had with his solicitor and which had been lodged. He said that this confirmed that Munro and Noble would be instructed to carry out the legal work in connection with the sale.
17. Mr McKay said that it was his intention to sell the Property for market value as soon as possible and he said that there was someone already interested in viewing it once it was in a position to be sold.

Reasons for Decision

18. The tribunal saw no reason for determination of the application to be continued to a Hearing. Mr McKay said that he had no additional evidence which he wanted to lead. The tribunal was satisfied that the Respondent had been advised of the case management discussion but had chosen not to engage with the Tribunal process.
19. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003.
20. The tribunal accepted that the email dated 21 March 2023 was evidence that the Applicant intends to sell the Property.

21. The tribunal accepted that the Applicants had title to sell the Property and that this was evidenced by the Title Sheet GLA176692 which was before it.
22. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.
23. The tribunal knew nothing about the Respondents position in relation to the application. They had chosen not to make written representations and had not participated in the case management discussion.
24. The tribunal considered that it was reasonable for landlords to sell a property in circumstances where they wanted to withdraw from the rental market and where tenants were not complying with the contractual obligations of the tenancy agreement.
25. In this particular case, the tribunal accepted that the Applicants want to sell the Property and that, whilst the application was not under one of the grounds in respect of non- payment of rent, the level of arrears was such that it had influenced their decision and that it was reasonable that they wanted to sell the Property.
26. In the particular circumstances of this application the tribunal determined that it is reasonable for the Applicant to recover the Property.

Decision

27. The tribunal determined that the application be granted and that an eviction order be made.

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
28 February 2024**