



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/3933

Re: Property at 4 Connelly Place, Motherwell, ML1 3GU (“the Property”)

Parties:

Mr David Miller, 2 Mallon Grove, Glenboig, Coatbridge, ML5 2FR (“the Applicant”)

Miss Lorraine Hutchison, 4 Connelly Place, Motherwell, ML1 3GU (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application received on 7 November 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, including a letter from Lanarkshire Law Estate Agents

Agents confirming their instructions to market/sell the Property for the Applicant, once vacant possession has been obtained and also attaching relevant Client Agreement.

2. Following initial procedure, on 5 February 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 23 April 2024 was served on the Respondent by way of Sheriff Officer on 18 March 2024. In terms of said notification, the Respondent was given until 4 April 2024 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 23 April 2024 at 2pm, attended only by the Applicant, Mr David Miller. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained and there was discussion regarding the eviction application. Mr Miller confirmed that he is seeking an eviction order on the basis that he intends to sell the Property. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. Mr Miller confirmed that the Respondent is quite difficult to get hold of. He has been trying to contact her again recently regarding the CMD today and received a message from her around 1pm today saying that she was not able to make the court in Edinburgh. He explained to her that it was a tele-conference Tribunal hearing and provided her with a copy of the dial in details. However, he was not expecting her to attend as she has said that she is ready for eviction and accepts that he is wishing to sell.
7. Mr Miller confirmed that the Respondent has been his tenant for around 3 years and was initially recommended to him by someone else in the block, where Mr Miller also owns and rents out a second property. There have been a few minor anti-social type issues which seem to relate to the Respondent’s boyfriend staying at the Property on and off. However, Mr Miller stated that the local authority have not been in contact with him regarding anti-social issues or anything of that nature. There have been no issues regarding rent payments as the Respondent’s rent is paid via benefits. Mr Miller has been unable to get access to the Property and is worried about the condition it may be in. The

reason that Mr Miller wishes to sell the Property is really down to the mortgage and other financial costs, such as factors fees, involved in the Property, particularly due to rising mortgage rates. He confirmed that the rent is currently £450 per month, whereas his monthly mortgage payment is now £816. Mr Miller said that the Respondent has an adult daughter but he does not think that she lives at the Property. He knows of no dependants. The Respondent has applied to the local authority for housing but has apparently been told that this will not be progressed until an eviction order is granted by the Tribunal.

8. Apart from this Property and the other property in the same block that he also rents out, Mr Miller advised that he has a company which lets out an additional four properties in the North Lanarkshire area. However, there are no mortgages over those properties so the financial situation with them is not as bad and he currently has no plans to sell them. However, he does intend to sell the other property in the block in due course, for the same reasons as this one. However, he is not able to take on a sale of both at the same time and the other property has a higher monthly rental so the shortfall is not as large. Mr Miller confirmed that he initially had a 10-year interest-only mortgage on the property. He had hoped to sell it when that expired but the value of the property at that time did not make it feasible for him to repay the mortgage. He therefore re-mortgaged for a further period and the mortgage still has several years to run.
9. Mr Miller was asked about the timeframe for selling/marketing the Property after he obtains vacant possession, given that the legislation requires the intention to sell/market within 3 months. Mr Miller confirmed that although he currently has a 'desktop' valuation of the Property, he needs to get vacant possession back and access the Property in order that the condition can be assessed and an accurate valuation obtained. He cannot sell at a loss, so if the condition is poor, he will require to refurbish the Property and put some additional money into it, to get it ready for sale. However, as there is currently a monthly shortfall on the Property, he is willing to do this in order to sell it as soon as possible. He does not intend to re-let the Property and maintains that it is his wish to sell. Apart from the mortgage costs, Mr Miller mentioned changes in the tax position and the difficulties increasing rents currently, which all make letting out again an unattractive proposition.
10. The Tribunal adjourned briefly to discuss the application and, on re-convening, confirmed that the Tribunal would grant the eviction order sought and the process which will now follow. Mr Miller was thanked for his attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 15 February 2021.

3. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession.
4. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was delivered personally by the Applicant to the Respondent on 1 August 2023.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 24 October 2023.
6. The Tribunal Application was submitted on 7 November 2023.
7. The Respondent remains in possession.
8. The Respondent did not lodge any written representations and nor did she attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent and that the Applicant's intention to sell arose from his decision that it was no longer financially viable, due to rising mortgage and other costs, for him to continue renting out the Property. The Applicant was quite candid in the information he provided to the Tribunal, in that, as he has been unable to access the Property recently, he does not know, until he is able to recover the Property, its condition or the extent of any refurbishment works that may be required before the Property can be marketed. The Tribunal was, however, persuaded that the Applicant has a genuine intention to sell as soon as possible, for the financial reasons stated and does not wish to re-let this Property. The Applicant had also addressed the Tribunal as to the background circumstances of the Respondent, as far as known to him. It was noted by the Tribunal that the Applicant has been in some communication with the Respondent and understands that it is her intention to seek local

authority accommodation but that this will be progressed further only on the granting of an eviction order by the Tribunal. The Respondent was aware of the Tribunal proceedings and appeared to be expecting an eviction order to be granted and had chosen not to make written representations nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.

4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

23 April 2024
Date