



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/23/0060

Property : 49A Macbeth Moir Road, Musselburgh EH21 8DQ (“Property”)

Parties:

Muhammed Waheed Choudhry, 50/8 Dalmeny Road, Edinburgh EH6 4QY (“Applicant”)

Muhammed Hassan Waheed, 50/8 Dalmeny Road, Edinburgh EH6 4QY (“Applicant’s Representative”)

Raluca-Elena Petre, 49A Macbeth Moir Road, Musselburgh EH21 8DQ (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with a Private Residential Tenancy Agreement which commenced on 6 April 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 1 October 2022 ("NTL"); royal mail proof of delivery on 12 October 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 6 January 2023; home report dated 1 October 2021; copy emails with East Lothian Council; copy emails with Mov8; copy letter from Bank of Ireland dated 30 August 2022 and copy bank statement. The Tribunal had sight of a certificate of service from sheriff officers evidencing service of the Application on the Respondent on 5 May 2023. The Respondent lodged a written submission dated 14 May 2023. On 30 May 2023 the

Applicant lodged a written submission and on 4 June the Applicant lodged a further written submission along with a letter from Bank of Ireland dated 12 May 2023 noting an increased monthly mortgage payment; a letter from Bank of Ireland dated 7 March 2023 noting a mortgage balance of £92,188.63 which was overdue and providing a period of grace until 6 June 2023 and with a letter from Bank of Ireland dated 18 April 2023 stating that the mortgage required to be repaid in full and stating that the matter was now urgent.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 7 June 2023 by teleconference. The Applicant’s Representative and the Respondent were both in attendance. Mr Waheed confirmed that the Applicant wished to include ground 1A in the Application. The Tribunal explained to the Respondent the effect of including ground 1A. The Respondent said she understood why the Applicant wished to sell and she did not object to the inclusion of ground 1A. The Tribunal determined to allow the application to include ground 1A which is that the Applicant intends to sell the property to alleviate financial hardship in terms of section 52(5)(b) of the 2016 Act.

The Tribunal noted that the documentation lodged indicated that the mortgage on the Property was interest only, that the sum due was circa £92,000 and that the repayment date was February 2023. Mr Waheed confirmed that was correct. He said that the monthly payments had recently increased to £480. He said he had spoken with the mortgage provider, Bank of Ireland, at the end of April. At that point they were unwilling to say what they would do if the Property was not sold. He said Bank of Ireland was aware that the Respondent was the tenant of the Property. He said that the Applicant was his father who was retiring this year. He said that his father owns the Property and the flat in which he lives but does not own any other properties.

The Tribunal noted that in her written submission the Respondent said that she and her daughter were undertaking exams. The Tribunal asked if they were now completed. The Respondent said that her daughter’s exams were finished but that she had her last exam in August. She said that her daughter is 16 and is finishing 4th year at school. She said that she lives in the Property with her husband, her daughter and her son aged 13.

The Respondent told the Tribunal that she wanted to stay in Musselburgh as her daughter had attempted suicide. She was receiving counselling at school. The Respondent wants to remain close to the school. She said that it was important for her daughter to stay in the group that she knows. She said that her son attends the same school as her daughter. She said that he is a bit anxious but not in the same situation as her daughter.

The Respondent said that she had tried to obtain alternative accommodation but all offers had been rejected. She said that she had positive feedback for a privately rented property until the landlord realised the Respondent had a dog. She said that she was in the process of registering the dog as an emotional support provider for her daughter. The Respondent said that she needs a 3 bedroom property as her daughter is 16. She said that she had been assessed as having “silver” priority for housing. She said that she had spoken to the local authority but they could not do anything until she was legally homeless at which point she would be assessed and possibly given emergency accommodation. She said that the local authority were aware of her daughter’s situation.

The Respondent said that she understood the Applicant’s position but she could not afford any other option. Mr Waheed said that the Applicant had no option other than to sell the Property. He said that the Applicant had been very reluctant to “go to court”. He said that the Applicant had always had a good relationship with the Respondent.

The Tribunal noted that the only issue in dispute was whether or not it was reasonable to grant an order for eviction. The Tribunal expressed the view that it had sufficient information to proceed to make a decision. Mr Waheed and the Respondent said they were content for the Tribunal to proceed to a decision and there was no further information they required to put before the Tribunal.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 6 April 2019 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by Royal Mail on 12 October 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 5 January 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 6 January 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
6. The Applicant intends to sell the Property to alleviate financial hardship.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, 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.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The Tribunal allowed the inclusion of ground 1A which is that the landlord intends to sell to alleviate financial hardship. The mortgage on the Property was interest only and had fallen due for repayment in February 2023. The Bank of Ireland had been pressing for payment. If the sum due was not paid, the Bank would likely take steps to repossess the Property. The Tribunal determined that grounds 1 and 1A for eviction had been established. The Application is therefore unaffected by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

The Tribunal was extremely sympathetic to the Respondent's position. However, having considered all of the circumstances the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.

Joan Devine

**Joan Devine
Legal Member**

Date : 7 June 2023