



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/22/4289

Re: Property at 87 Christies Lane, Montrose, Angus, DD10 8HY (“the Property”)

Parties:

Christine Legg, 69 Mycenae Road, London, SE3 7SE (“the Applicant”)

Khalid Khan, 87 Christies Lane, Montrose, Angus, DD10 8HY (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 27 December 2017.
2. The application was dated 30 November 2022 and lodged with the Tribunal on or around that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 19 August 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by Signed For (recorded delivery) post on that day, and then signed for by the Respondent on 20 August 2022, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of

the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice simply repeated “The landlord is selling the property” and that it attached a “Copy of letter from Your Move Montrose who will market property for sale”. The Notice to Leave intimated that an application to the Tribunal would not be made before 10 January 2022.

4. The application papers included a copy of a letter by Your Move Montrose dated 19 August 2022 which says little other than that the Application “has asked us to market this property for sale”. The application was further accompanied by a detailed agreement between the Applicant and Your Move dated 25 November 2022 showing that the Applicant instructed them to proceed to market the Property and to obtain a Home Report. (No copy of a Home Report was provided.)
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Angus Council on 30 November 2022 was included in the application papers.

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 2 March 2023 at 10:00. We were addressed by the Applicant’s agent, Alexandra Wooley, trainee solicitor, of Bannatyne Kirkwood France & Co.
7. There was no appearance for the Respondent. On 31 January 2023, the Respondent sent a brief email to the Tribunal which stated: “I would be most grateful if you could extend the lease at the above address till the end of April to enable me to find an alternative residence”. There was no follow up email with any update on progress. In light of this email, we held back commencement of the CMD until 10:05 but the Respondent, nor anyone on his behalf, did not dial in (nor did anyone do so prior to the conclusion at around 10:30). In the circumstances we were satisfied to consider the application in the absence of the Respondent.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. She explained that the Applicant had no other rental properties and that the sale was part of a long-term plan both to raise capital and to cease being a landlord, which role she was now finding too heavy a responsibility. The Applicant had initially offered the Property for sale to the Respondent but he had not been in a position to purchase.
9. The Applicant’s agent confirmed that instructions had been sought further to the Respondent’s email of 31 January 2023 and the Applicant still sought eviction in normal terms. In consideration that eviction may be suspended as long as a further six months in terms of the 2022 Act, the Applicant did, however, intend to engage with the Respondent to seek a voluntary recovery of the Property at a mutually agreed date.

10. We asked the Applicant to address us further on reasonableness and she informed us of the following:
 - a. The Respondent was not believed to have any dependents residing with him (nor indeed anyone residing with him) at the Property.
 - b. The Applicant knew of no special requirements of the Respondent in regard to residing at the Property (such as adaptations, or the location being particularly significant for any support organisation).
 - c. The Respondent was in work at the commencement of the Tenancy and was believed to remain with the financial means to secure alternative private accommodation.
 - d. There were no arrears outstanding.
 - e. The Respondent was believed still to be residing at the Property.
11. No motion was made for expenses nor for amendment of any part of the application.

Findings in Fact

12. On 27 December 2017, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
13. On 19 August 2022, the Applicant’s letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 14 November 2022.
15. A copy of the Notice to Leave was posted to the Respondent by Signed Form post on 19 August 2022, and signed for by the Respondent on 20 August 2022.
16. Clause 4 of the Tenancy Agreement provided for notices to be served using “hard copy by personal delivery or recorded delivery”.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 Part 1 of the 2016 Act on or around 30 November 2022.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Angus Council on the Applicant’s behalf on 30 November 2022.
19. The Applicant approached Your Move Montrose to market the Property on or about 19 August 2022.
20. The Applicant formally instructed Your Move to market the Property and obtain a Home Report on or about 25 November 2022.

21. The Applicant wishes to sell the Property in early course so as to discontinue being a landlord, and to raise capital from the sale for her own use.
22. On 24 January 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 2 March 2023 upon the Respondent.

Reasons for Decision

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
24. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...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.*
25. The formal agreement dated 25 November 2022 constitutes evidence under paragraph (3)(a) and combined with the submissions by the Applicant's agent (on the Applicant's financial plans, and desire to discontinue being a landlord) we agreed that paragraphs (2)(a) and (b) were satisfied.
26. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were reasonable, if brief. The Tribunal's own property search disclosed a standard security over the Property, and it is understandable for a landlord to seek to discontinue being a landlord, and seek to recover the capital of their investment, in the current financial climate.
27. There was no argument against the reasonableness of eviction, other than the Respondent's very brief request (over a month ago) that he be given until the end of April to seek new accommodation. As the Respondent failed to attend the CMD we are unaware whether he still requires such further time, what steps he is taking to seek alternative accommodation, and whether he is encountering any difficulties in locating suitable accommodation.

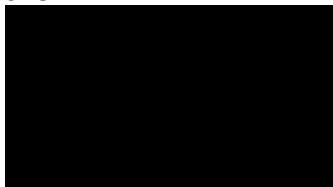
28. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
29. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent. In any case, should the 2022 Act be extended past the current end date of 31 March 2023, the Respondent may have up to a further six months before being under threat of eviction. Conversely, at the date of the Decision, the Tribunal is not aware whether or not the 2022 Act will cease to have effect on 31 March 2023 and therefore it may expire prior to the expiry of the period of appeal of this decision.
30. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
- a. the day following the end of a period of 6 months beginning the date of our order (that is 2 March 2023); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, should that expiry or suspension occur on or after 3 April 2023;
 - c. 3 April 2023 in the event that the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 has occurred on or before 2 April 2023.

Decision

31. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 Act and the appeal period of this Decision.

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.



2 March 2023

Legal Member/Chair

Date