



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/3968

Re: 75 Lockhart Place, Cambusnethan, Wishaw, ML2 8PP('the Property')

Parties:

Stuart Currier care of Shilladys Estate and Letting Agents, 206 Main Street, Wishaw, ML2 7LU('the Applicant')

Alan Shillidy, Shilladys Estate and Letting Agents, 206 Main Street, Wishaw, ML2 7LU ('The Applicant's Representatives')

Karen Brown, 75 Lockhart Place, Cambusnethan, Wishaw, ML2 8PP ('the Respondent')

Mark Law, Hamilton Citizens Advice Bureau, Almada Tower, 67 Almada Street, Hamilton, ML3 0HQ ('The Respondent's Representative')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) Sandra Brydon (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 27th October 2022 and was received by the Tribunal Administration on 31st October 2022. The application states that the ground for eviction was as follows:

The Landlord intends to sell the Let Property.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 15th October 2020. The commencement date of the tenancy was 15th October 2020.
- Notice to Leave dated 7th July 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 4th October 2022. The Notice to Leave stated that the Tenant had resided in the Property since 24th May 2017.
- A recorded delivery letter from the Applicants' Representative to the Respondent dated 7th July 2022 enclosing the Notice to Leave.
- A Royal Mail proof of delivery confirming that the letter had been delivered on 9th July 2022.
- Email from the Applicants' Representative to North Lanarkshire Council attaching the Section 11 Notice dated 28th October 2022.
- Section 11 Notice.
- Letting Agent agreement between the Applicant and Shilady's Estate and Letting Agents.
- A selling agreement between the Applicant and Shillady's, Estate and Letting Agents in respect of the sale of 75 Lockhart Place, Cambusnethan dated 10th December 2022.

2. Written Representations by the Respondent.

2.1 Written Representations dated 3rd March 2023.

'I write this note because I have been given until Monday the 6th of March to provide written representations to the Tribunal. I have asked Shelter and the Legal Services Agency to assist me and they have told me that they cannot take on my case, at least for the present. Therefore I have not yet been able to identify a legal representative although Coatbridge CAB has asked Hamilton CAB whether they have capacity to accept a referral. I have been assisted by Coatbridge CAB to draft this note to protect my rights in this matter and in the hope that this note is helpful to the Tribunal and all of the parties to this application. I intend to attend the Case Management Discussion if I am not able to identify a representative. I first became the tenant of my current home in May 2017. In 2020 my landlord's agent asked me to sign the tenancy agreement that has been exhibited as part of the landlord's application on the basis that the Agent believed that signing the agreement was to my advantage. I did not understand that my signature would be used as a justification for an argument that my existing tenancy was being brought to an end and consequently, I may wish to argue that the terms of Paragraph 3 of Part 2 of Schedule 5 of the Private Housing (Tenancies)(Scotland) act 2016 and 46A of the Housing (Scotland) act 1988 are not met in this present case, that I am not a Private Residential tenant and, therefore, that my tenancy has not been ended by a legally competent notice. If appropriate I may also wish to argue that it is not reasonable in all of the circumstances to permit the landlord to evict me from my home. Inter alia, I am a disabled woman and I have three children, one of whom is also disabled. My home has a downstairs toilet and bathroom and is otherwise suitable for my disabilities and I have lived there since 2017. The Local Authority may be willing to purchase my home from my landlord and allow me to remain in my home as their tenant. More information about the Local Authority scheme is available here: <https://www.northlanarkshire.gov.uk/news/home-purchase-scheme-extended-private-landlords>. I have reason to believe that my landlord Mr

Stuart Currier has made an application to the Local Authority to sell my home to them and that he is currently waiting for the Local Authority to process his application and carry out a valuation of my home prior to the preparation of an offer to purchase. Consequently, I may wish to argue that it is not appropriate for the Tribunal to permit the landlord to evict me until the Local Authority is able to make an offer and so that the landlord is able to make an informed decision on selling my home to the Local Authority. If I am able, I may make further written representations prior to the Case Management Discussion.'

2.2 Written Representations sent to the Tribunal on 14th March 2023.

The written representations comprised an email from the Respondent's representative advising that the Respondent experienced delays in getting an appointment and obtaining advice and also text messages between the Respondent and Mrs Currier dated October and November 2022 and January 2023 and a repeat of the written representations dated 3rd March 2023.

3. The First Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 17th March 2023.

The Applicant and his representative, Alan Shillady, attended the CMD.

The Respondent did not attend the CMD but her representative Mark Law attended on her behalf.

3.1 As a preliminary matter Alan Shillady agreed that he was happy for the Tribunal to consider the written representations sent to the Tribunal by the Respondent's representative on 14th March 2023, even although they were sent late.

3.2 Oral Representations by the Applicant and his Representative.

3.2.1 Mr Shillady confirmed that he posted the eviction application to the Tribunal on 28th October 2022. He accepted that the Tribunal would have received the application after 28th October 2022 and the Cost of Living (Tenant Protection)(Scotland) Act 2022 and the associated eviction moratorium applied to the application.

3.2.2 The Applicant and the Respondent are known to each other.

3.2.3 The Applicant needs to sell the Property due to his personal circumstances. He does not have a mortgage over this property but extended the mortgage over his main residence to facilitate the purchase of this Property. His fixed rate mortgage will end in October and he will not be able to afford the increased mortgage payments after that time.

3.2.4 The Respondent has been in touch with North Lanarkshire Council to enquire if they would purchase the property under the Open Market Purchase Scheme. The application process has been very slow. Mr Currier advised that he had received an email from the Council yesterday. They had sent an application form for the tenant to complete. The Council did not say how long the process would take. They advised that this was the first time the council had considered purchasing a property under the Open Market Purchase Scheme where there was a sitting tenant.

3.2.5 They advised that the accommodation comprises dining kitchen, lounge, dining room or bedroom on the ground floor, WC on the ground floor, two bedrooms and a bathroom on the upper floor. The Property has not been adapted for the purposes of meeting disabled needs.

3.2.6 The Respondent is a good tenant. The rent payments are up to date.

3.3 Oral Representations by the Respondent's Representative.

3.3.1 It is not appropriate to evict the Respondent whilst the Open Market Purchase Scheme application to the Council is ongoing.

3.3.2 The Respondent had offered to increase the rent to off set the Applicant's increased mortgage costs.

3.3.3 The Respondent is employed and in receipt of Universal credit.

3.3.4 The Respondent has four children. Her oldest son has moved out of the Property. One of the children who reside with her suffers from autism and struggles with change.

3.3.5 The Respondent has a medical condition which means that she needs to have a ground floor WC available to her. The Property 75 Lockhart Place meets her needs.

3.3.6 The Respondent has made an application to North Lanarkshire Council for them to buy the Property in terms of the Open Market Purchase Scheme. The Scheme criteria states that homes may be purchased where the needs of households are not currently available in the council stock. The Respondent's medical condition means that she falls within this criteria.

3.3.7 The Respondent accepts that the lease is a Private Residential Tenancy and is withdrawing her written representations to the effect that the Notice to Leave was defective as the lease was not a Private Residential Tenancy.

3.4 Joint Oral Representations

After both parties gave the Tribunal their oral representations both parties agreed that the CMD should be continued to allow the parties to discuss an increase in the rent and to allow time for the Open Market Purchase Scheme to progress. Mrs Taylor advised the parties that the Tribunal would not be involved in any agreed rent increase as this was not part of this application.

3.5 The Case Management Discussion was continued to 22nd May 2023.

4. Continued Case Management Discussion.

This case called for a conference call Case management Discussion (CMD) at 12.15 on 22nd May 2023.

The Applicant's representative, Alan Shillady, attended the CMD.

The Respondent attended the CMD.

4.1 Oral Representations by the Applicant's Representative.

4.1.1 Mr Shillady explained that the Council had recently valued the Property at £155,000 which is above the upper limit of the Open Market Purchase Scheme. The Council had sent the Applicant an email advising that unfortunately they would not be making an offer under the Open Market Purchase Scheme.

4.1.2 Mr Shillady also explained that the Applicant had not increased the rent as the Respondent would be unable to afford any rent increase.

4.1.3 Mr Shillady advised that Mr Currier's fixed rate mortgage comes to an end in October 2023 and the mortgage interest rate will increase from 1.2% to 4%. He is not sure what the new monthly payments will amount to but his client is not in a position to pay the increased amount and needs to sell the Property.

4.2 Oral Representations by the Respondent.

4.2.1 Ms Brown explained that she has been actively seeking alternative housing.

4.2.2 Her health has deteriorated so she is now off work.

4.2.3 Her ill health means that she will need an adapted Property with a bedroom and bathroom on the ground floor. The property she rents at 75 Lockhart Place, Cambusnethan, Wishaw does not have a bathroom on the ground floor.

5. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenant.

(iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The selling agreement between the Applicant and Shillady's, Estate and Letting Agents in respect of the sale of 75 Lockhart Place, Cambusnethan dated 10th December 2022 was sufficient in its terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 7th July 2022 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 4th October 2022.

The Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Landlord served the Notice to Leave on the Tenant by recorded delivery letter and correctly gave the Tenant a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

6. Decision

6.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1.1 The Tribunal had a copy of the Landlord's title LAN97819 and established that the Applicant is heritable proprietor of the Property and he is entitled to sell the Property.

6.1.2 Evidence had been provided that the Applicant intend to sell the Property. The Tribunal accepted the following evidence:

6.1.2.2 The selling agreement between Shillady's Estate and Letting Agents and the Appellant dated 10th December 2022 in respect of the sale of 75 Lockhart Place, Cambusnethan.

6.1.2.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once he obtains vacant possession.

6.2 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is 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, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Appellant will not longer be able to afford his mortgage payments from October 2023 once his present fixed rate mortgage comes to an end and he consequently needs to sell the Property to enable him to redeem the outstanding mortgage; the fact the Respondent has applied for alternative housing and the Property 75 Lockhart Place, Cambusnethan, Wishaw will not be suitable for the needs of the Respondent as her health deteriorates as it does not have a bathroom on the ground floor.

6.3 The Tribunal also found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the application was received by the Tribunal after 28th October 2022.

6.4 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 23rd November 2023 or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

7. 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.

Jacqueline Taylor

Legal Member

22nd May 2023