



Decision with Statement of Reasons 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/23/0119

Re: Nether Knockbuckle, Hazelmere Road, Kilmacolm, PA13 ("the Property")

Parties:

John Hamilton and Sheila Hamilton, Sonas, Hazelmere Road, Kilmacolm, PA13 4JW ("the Applicants")

Caitlin Gillon, Solicitor, Kingsley Wood & Co, Solicitors ('The Applicant's Representatives')

Brian Wilson, Nether Knockbuckle, Hazelmere Road, Kilmacolm, PA13 4JW ("the Respondent")

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 10th March 2023. The application states that the ground for eviction was as follows:

The Landlord seeks possession of the let property in order to sell it. Notice has been given to the Tenant of the Landlord's intention to sell the let property. Ground 1 of Part 1 to Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

Prior to the Private Rented Tenancy Agreement being entered into the Landlord had advised the Tenant he intended to sell the let property. The tenant and his wife expressed an interest in purchasing same and persuaded the landlord to grant a Private Residential Tenancy Agreement while the Tenant finalised his funding arrangements for the purchase. No purchase has materialised despite an offer being received from the Tenant which the Tenant refuses or delays in progressing. Rent at the agreed rate of £2000 per month has been paid only intermittently. Rent arrears present stand at £27,500 although this action is concerned solely with the Landlord wishing to recover possession of the let property in order to sell it as originally intended.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 5th October 2020. The commencement date of the tenancy was 5th October 2020.
- Notice to Leave dated 11th October 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 15th November 2022.
- Certificate of Service of the Notice to Leave dated 12th August 2022 by Graeme Kirk, Sheriff Officer.
- Section 11 Notice addressed to Inverclyde Council.
- Letter to Inverclyde Council dated 17th January 2022 enclosing the Section 11 Notice with relative recorded delivery slip.
- Copy of undated letter from Brian & Susan to John & Sheila requesting to be permitted to stay as tenants until 30th June 2022.
- Copy of letter dated 1st August 2021 from Sheila Hamilton to Brian advising that the rent was being increased to a commercial rent of £2000 per month while they seek a new buyer.
- Copy of letter dated 18th January 2022 from John Hamilton to Brian and Susan advising that their intention is to sell Nether Knockbuckle at **as** they wish to have vacant possession no later than 28th February 2022.
- Copy offer dated 8th December 2020 from Buchanan Dickson Frame Solicitors on behalf of Brian and Susan Wilson to Macroberts Solicitors to purchase Nether Knockbuckle with a timelimit for written acceptance of 18th December 2020.

2. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 22nd May 2023.

The Applicants did not attend the CMD but their representative Caitlin Gillon attended on their behalf.

The Respondent attended the CMD.

In advance of the CMD the Respondent had sent the Tribunal Administration an email requesting a postponement but provided no evidence to substantiate the postponement request. Consequently, the Tribunal were unable to consider the postponement request as the request did not comply with the requirements of Tribunal Rule 28(2)(c).

No written representations had been received from the Respondent.

2.1 The Tribunal identified with the parties the following agreed facts:

2.1.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 5th October 2020.

2.1.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

2.1.3. The Applicants are Landlords of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate REN49271. Section B of the Land Certificate confirmed that the Applicants are heritable proprietors of the Property.

2.2 Oral Representations by the Applicants' Representative.

2.2.1 Mr and Mrs Hamilton had intended to sell the Property in 2020 and the Respondent advised them that he was interested in buying the Property but he needed more time to arrange his finances.

2.2.2 The Applicants agreed to lease the Property to the Respondent to allow him time to arrange the purchase price of the Property.

2.2.3 The Respondent's solicitor submitted an offer to the Applicants' solicitor dated 8th December 2020 but missives were never concluded.

2.2.4 The Respondents have sporadically paid rent. The arrears amounted to £27,500 at the date of the application (10th March 2023).

2.2.5 The Applicants are sympathetic to the Respondent's position but they have been waiting for three years for the sale to settle and they feel that they have waited long enough.

2.2.6 Kingsley Wood Solicitors provided the Applicants with an estimate of conveyancing costs in March 2023.

2.2.7 The Applicants have not yet instructed a home report as they do not want to arrange a home report before they have vacant possession, to avoid the report having to be refreshed.

2.2.8 The Applicants own their own home. The only property they lease is Nether Knockbuckle, Hazelmere Road, Kilmacolm. They do not rent out any other properties.

2.3 Oral Representations by the Respondent.

2.3.1 Mr Wilson explained that he had intended to buy the Property. His business was affected by covid but he is starting to see signs of an improvement. He has a commercial cleaning business as well as a launderette and works mainly within the Public House and Hotel sector which is now starting to recover.

2.3.2 He has approached another investor to assist with the Purchase.

2.3.3 He has not applied for a mortgage recently or over the last 3 years as he does not believe he would be able to obtain a mortgage at the moment.

2.3.4 The rent arrears in March 2023 amounted to £27,500 and he has not paid any rent to the Applicants since that time.

2.3.5 He will endeavour to pay all the rent arrears due to the Appellant. His business is due money and he hopes to use the money to pay the rent arrears.

2.3.6 He has not applied to the local authority to be rehoused nor has he applied for or sought advice in relation to any welfare benefits to assist with rent payments.

2.3.7 He resides in the Property with his three children.

3. 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 Landlords.

(ii) the name and address of the Landlords' representative.

(iii) the name and address of the Tenants.

(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 following documents were sufficient in their terms:

- Copy of undated letter from Brian & Susan to John & Sheila requesting to be permitted to stay as tenants until 30th June 2022.

- Copy of letter dated 1st August 2021 from Sheila Hamilton to Brian advising that the rent was being increased to a commercial rent of £2000 per month while they seek a new buyer.

- Copy of letter dated 18th January 2022 from John Hamilton to Brian and Susan advising that their intention is to sell Nether Knockbuckle at they wish to have vacant possession no later than 28th February 2022.

- Copy offer dated 8th December 2020 from Buchanan Dickson Frame Solicitors on behalf of Brian and Susan Wilson to Macroberts Solicitors to purchase Nether Knockbuckle with a timelimit for written acceptance of 18th December 2020.

(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 11th August 2022 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 15th November 2022.

The Tenancy commenced on 5th October 2020. As at 11th August 2022 (the date of the Notice to Leave) 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 sheriff officer on 12th August 2022 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 Landlords' representatives as required by Section 109(c) of the Procedure Rules.

4. Decision

4.1 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:

4.1.1 The Tribunal had a copy of the Landlord's title REN49271 and established that the Applicants are heritable proprietors of the Property and they are entitled to sell the Property.

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

4.1.2.1 Copy of undated letter from Brian & Susan to John & Sheila with refers to the fact that they intended to buy the Property and requesting to be permitted to stay as tenants until 30th June 2022.

4.1.2.2 Copy of letter dated 1st August 2021 from Sheila Hamilton to Brian advising that the rent was being increased to a commercial rent of £2000 per month while they seek a new buyer.

4.1.2.3 Copy of letter dated 18th January 2022 from John Hamilton to Brian and Susan advising that their intention is to sell Nether Knockbuckle at they wish to have vacant possession no later than 28th February 2022.

4.1.2.4 Copy offer dated 8th December 2020 from Buchanan Dickson Frame Solicitors on behalf of Brian and Susan Wilson to Macroberts Solicitors to purchase Nether Knockbuckle with a timelimit for written acceptance of 18th December 2020.

4.1.2.5 The oral representations of Ms Gillon that Kingsley Wood had provided the Applicant with a conveyancing fee estimate in March 2023.

4.1.3 The Tribunal find as a matter of fact that:-

4.1.3.1 The Applicants originally granted the Respondent the lease of the Property as they wished to sell the Property to Respondent and they wanted to give him time to arrange his finances.

4.1.3.2 The Applicants intend to put the Property on the market for sale once they obtain vacant possession.

4.1.3.3 The Respondent owes the Applicants in excess of £27,500 rent arrears.

4.2 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 for the following reasons:

4.2.1 The fact that the Applicants originally entered into the lease with the Respondent as they wished to sell the Property to him and they wanted to allow him time to arrange his finances.

4.2.2 The fact that the Applicants intended to sell the Property from the commencement of the lease in favour of the Respondent.

4.2.2 The fact that the Applicants have been waiting since October 2020 for the Respondent to settle the Purchase of the Property.

4.2.3 The fact that the Respondent owes the Applicants rent arrears amounting to in excess of £27,500.

4.2.4 The fact that the Respondent has not considered it necessary to apply to the local authority for rehousing which implies that he will be able to obtain alternative rented accommodation.

4.3 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.

4.4 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.

4.5 Consequently the Tribunal determined that the order for possession of the Property be granted as Ground 1 of Schedule 3 of the 2016 Act had been met.

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

