



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/22/3952

Re: Property at 355-B Charleston Drive, Dundee, DD2 4HP (“the Property”)

Parties:

Mr Nadeem Rao, 23 Constitution Crescent, Dundee, DD3 6LT (“the Applicant”)

Mr Abayomi Alli, Oluwatosin Alli, Oluwakanyinsola Alli, Ayumikum Alli, Fiyinfoluwa Alli, David Alli, Deborah Alli, all 355-B Charleston Drive, Dundee, DD2 4HP (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents

Background

1. By application, received dated 26 October 2022, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property. The application stated that it was becoming difficult for the Applicant to manage the Property due to health issues.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 12 November 2019 at a rent of £650 per month, and a Notice to Leave, dated 8 July 2022, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 3 October 2022.

3. On 20 December 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 27 January 2023. The Respondents did not make any written representations to the Tribunal.
4. A Case Management Discussion scheduled for 16 February 2023 was postponed due to one of the Respondents being unwell. His request for postponement was accepted by the Applicant.
5. On 3 May 2023, the Applicant's representatives, Campbell Boath, solicitors, Dundee, provided the Tribunal with documentation regarding the health of the Applicant. As this included personally sensitive information, it was not cross-copied to the Respondents. The Tribunal was also provided with a Rent Statement showing that, whilst there had never been arrears in the past, the rent due on 23 April 2023 had not been paid.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 4 May 2023. The Applicant was represented by Mr Alec Campbell of Campbell Boath, solicitors, Dundee. The Respondents were not present or represented.
7. Mr Campbell told the Tribunal that he understood the Respondents had been trying to secure alternative accommodation, as they had asked the Applicant for a little more time. The Applicant's health condition meant that he could no longer manage the Property and his intention as to sell once he had vacant possession and had carried out any work required in advance of a sale.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
9. Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from

a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

10. The Tribunal was satisfied that the requirements of Ground 1 in respect of service of the Notice to Leave had been complied with and that the Applicant intends to sell the Property. No evidence, such as a letter of engagement from a solicitor/estate agent or a Home Report had been provided, but the Tribunal accepted the information provided as to the Applicant's health, a serious heart condition, as sufficient evidence that he intends to sell the Property. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of those facts.
11. The Tribunal noted that the Respondents had chosen not to submit written representations or to be present or represented at the Case Management Discussion, so had not provided any information to indicate that it would not be reasonable to issue an Eviction Order. The Applicant had provided evidence that he suffers from a serious heart condition and could no longer manage the letting of the Property. The Tribunal accepted that this was a reasonable ground for his deciding that the Property should be sold once he had vacant possession.
12. Having considered carefully all the evidence before it, the Tribunal decided on balance that it would be reasonable to issue an Eviction Order. The Tribunal stressed that no fault attached to the Respondents in respect of the issuing of the Order against them.
13. The application is not affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022, as the Notice to Leave was served and the application received by the Tribunal prior to 28 October 2022, but in determining the date before which the Order cannot be enforced, the Tribunal was mindful that a public holiday on 8 May 2023 might result in its Decision not being sent to the Parties before 9 May 2023.

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.

**Mr George Clark
Legal Member/Chair**

**4 May 2023
Date**

