



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/EV/22/4283

Re: Property at 30 Hunter Terrace, Loanhead, EH20 9SJ (“the Property”)

Parties:

Mrs Gillian Naismith, 51a Inveresk Road, Musselburgh, EH21 7BQ (“the Applicant”)

Marchside Properties Ltd, 386 Morningside Road, Edinburgh, EH10 5HX (the Applicant’s Representative)

Miss Kailey Pollock, Mr Aidan Barclay, 30 Hunter Terrace, Loanhead, EH20 9SJ; 30 Hunter Terrace, Loanhead, Midlothian, EH20 9SJ (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of eviction be granted against the Respondents.

Background

1. On 30th November 2022, the Applicant’s Representative submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. The application disclosed that the Applicant is seeking eviction on Ground 1 contained in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“Ground 1”).
3. On 1st March 2023, the application was accepted for determination by the Tribunal.

Case Management Discussion

4. A case management discussion was held on 4th May 2023 by teleconferencing.
5. Neither party submitted written representations.
6. The Respondents were present. Mrs Kate Thomson of Marchside Properties Ltd provided for the Applicant. Oral evidence was heard from the Applicant and the Respondents.
7. The legal member set out the purpose of a case management discussion.

The Law

8. Private Housing (Tenancies) (Scotland) Act 2016

Section 51

First-tier Tribunal's power to issue an eviction order

(1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3

Landlord intends to sell

1(1) It is an eviction ground that 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 subparagraph (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.

9. The tribunal indicated that it required to establish if the ground for eviction stated in the application was met. Thereafter it had to decide if it was reasonable to evict the Respondents.

10. After hearing from the Respondents and the Applicant's Representative, the tribunal determined that it would not be necessary to have a Hearing prior to making a determination.

11. Findings in Fact

11.1 Parties entered into a private residential tenancy agreement for the Property which commenced on 1st October 2020.

11.2 The contractual rent is £750 monthly.

11.3 The Applicant served a notice to leave on the Respondents requiring them to vacate by 6th November 2022.

11.4 The Respondents still occupy the Property.

11.5 Midlothian Council was served with the appropriate notice in terms of the Homelessness etc (Scotland) Act 2003.

11.6 The Property is a two bedroomed flat.

11.7 The Respondents and their family have a five month old child.

11.8 The Respondents have been unable to find alternative private rented accommodation in the area at a suitable cost.

11.9 The Respondents would prefer being housed by the Council or a registered social landlord.

11.10 The Applicant has instructed a firm of solicitors to market and sell the Property.

12. Finding in Fact and Law

12.1 The Applicant intends to sell the Property.

Reasons

13. The tribunal noted the terms of a letter from VMH Solicitors to Marchside Properties Ltd dated 10th November 2022 which stated that it had been instructed by the Applicant to market and sell the Property whenever vacant possession had been obtained.
14. Mrs Thomson said that the Applicant intends to market the Property for sale. She said that she had limited detailed information on the reasons for the Applicant intending to do so. She said that the personal circumstances of the Applicant and her partner had changed and that she understood that their financial circumstances had worsened because of employment reasons. She said that the Applicant was also finding that the costs involved with the Property had increased as a consequence of the rise in interest rates.
15. The Respondents set out their circumstances. They and their five month old child live in the Property which is a two bedroomed flat. Ms Pollock said that she is currently on maternity leave but does not know if she will be able to return to work. She said that she and her partner are managing to pay the rent but that they are struggling financially because of the general rise in costs and reduction in income as a consequence of her being off work.
16. The Respondents said that they could not find suitable rented accommodation in the area with the same or lower rental costs as the Property. They said that the rental levels in the private residential market were unaffordable for them. They said that they would prefer to be housed by Midlothian Council because the rent would be lower. Mr Barclay said that a council tenancy would also provide stability for the family.
17. The Respondents confirmed that an application for housing was made to the Council prior to the notice to leave being served. Ms Pollock said that there was little chance of being allocated a house unless they were homeless as a consequence of an order of eviction being made. She said that the process would not commence until this occurred.
18. Mrs Thomson said that she had made enquiries of Midlothian Council and had been told that housing should be provided within the timeframe of the period prior to the date of the eviction being effective. She said that she had been told that the necessary process would start whenever the Council knew the date of the eviction, albeit that others may have priority because their eviction dates were earlier.

19. Mrs Thomson said that her company manages no other property for the Applicant and that, as far as she is aware there is no other property which the Applicant rents out.

Discussion

20. The tribunal considered whether or not the necessary ground for eviction had been met. It had limited information but had the benefit of a copy of a letter from a firm of solicitors which had been instructed to market the Property when the Applicant had vacant possession.

21. The tribunal also considered the submissions made by the Mrs Thomson.

22. On the balance of probabilities, the tribunal determined that the Applicant intended to market the Property.

23. The tribunal required to carry out a balancing and weighing exercise to determine whether or not it was reasonable to grant the order of eviction.

24. There was not much information on the Applicant's personal circumstances other than what Mrs Thomson had stated about her general financial situation.

25. The Respondents were clear in their position which was that it would be more suitable for them to be housed by the Council not only because the rent would be cheaper but also because such a property would mean a more stable home for them. The Respondents offered no opposition to the application.

26. The tribunal, having weighed matters, considered that it was reasonable to grant the order of eviction.

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.

4th May 2023

