



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/0096

Re: Property at 56 MARMION PLACE, CUMBERNAULD, G67 4AP (“the Property”)

Parties:

Mr STEPHEN NULTY, 15 ST FRANCIS RIGG, GLASGOW, G5 0UR (“the Applicant”)

Ms Kristin McCulloch, 56 MARMION PLACE, CUMBERNAULD, G67 4AP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Khan (Ordinary Member)

Decision

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

Background

1. This is an application received in the period between 11th January and 22nd February 2023 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant.
2. The Applicant’s representative lodged a copy Notice to Leave made under ground 1, dated and served on 18th July 2022 stating that an application for an eviction order would not be submitted before 13th October 2022, with evidence of email service, and copy section 11 notice with evidence of service. The Applicant’s representative stated that the tenancy agreement was not available.

The Case Management Discussion

3. A Case Management Discussion took place by telephone conference on 23rd May 2023. The Applicant was not in attendance and was represented by Ms Joanne Argue, Dial A Home. The Respondent was in attendance.

The Applicant's position

4. Ms Argue said the Applicant is seeking an eviction order as he requires to sell the Property. He is in severe financial difficulties as a result of the Respondent failing to pay rent and accruing the sum of £3900 in rent arrears. The mortgage on the Property has been changed to an interest-only tracker mortgage. The Applicant has a mortgage over the property in which he lives. He is in employment. He allowed the Respondent a period of time after the notice period had expired to assist her in finding further accommodation, but the Respondent is still residing in the Property.
5. Responding to questions from the Tribunal, Ms Argue said the tenancy agreement commenced on 1st December 2020. The tenancy had originally been managed by a different letting agent, and they had not provided a copy of the original tenancy agreement. Ms Argue said the letting agent sent a further tenancy agreement to the Respondent but it was not signed and returned.
6. Ms Argue said the Respondent has failed to allow access to the Property for the purposes of marketing it for sale, so there is no documentary evidence available as evidence of the Applicant's intention to sell. Ms Argue said the Respondent has failed to allow entry for gas safety inspection and has barricaded the front door, and leaves a key in the back door, to stop the letting agent from entering the Property. Responding to questions from the Tribunal, Ms Argue said the letting agent would write to a tenant informing them that they were intending to take access to a property for the purposes of inspection. If the tenant responds to say access is denied, the letting agent would not try to take access. In the absence of any such response, they would try to take access.
7. At a late stage in the CMD it was made clear that the Applicant's representative wished to amend the application to include ground 1A. Following an adjournment, during which Ms Argue discussed matters with the Applicant, further information on the increase in his mortgage payments was provided. Email correspondence from a selling agent was also provided to the Tribunal during the CMD confirming that a valuation had been carried out the previous year, and that the selling agent is instructed to market the Property when it becomes vacant.

The Respondent's position

8. The Respondent said she is not opposing the eviction order. She felt it would not be fair to do so, as the Applicant requires to sell the Property. She is in

- contact with the local authority's housing department, and has been told she will be provided with temporary accommodation, pending allocation of permanent accommodation. The Respondent resides with her six children aged 1, 3, 13, 14, 19 and 20. The Property has four bedrooms, and she has been told by the local authority that they require a five bedroomed property, but she has not been given any indication of when one will become available
9. The Respondent is in part-time employment. She does not receive benefits. She has taken advice from the Citizens Advice Bureau, who informed the Applicant of her position on her behalf. She has been in touch with her Member of Parliament and will contact them again if the order is granted. She has begun the process of packing up her belongings.
 10. The Respondent confirmed she has a copy of the original tenancy agreement. It commenced on 1st October 2018. The method of communication for service of notices as set out in the tenancy agreement includes email.
 11. The Respondent said she allowed access for a property valuation last summer. She denied that she had been asked for access for gas safety checks, and said she would not deny access for such matters. She said she has not barricaded the front door, and she is at home most of the time, but has had no requests for access. The Respondent denied she had received a tenancy agreement to sign, saying she would have no reason not to sign an agreement. She felt it was unfair that she was being made out to be unreasonable, when this was not the case.
 12. It was explained by the Tribunal that the matter could be continued to a hearing. The Respondent said she wanted the eviction order to be granted immediately for the sake of her mental health. The situation had been difficult, but she and her family have now accepted it, and they wish to see the process finished. She said she wished to avoid any further delay and felt it would be beneficial to all if it could be wrapped up now.
 13. The Respondent said she did not wish to oppose the Applicant's application to amend the application to include ground 1A.
 14. The Respondent said she did not wish to apply for additional time before which the eviction order could be executed.

Findings in Fact and Law

15.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1st October 2018.
 - (ii) Notice to Leave has been served upon the Respondent.
 - (iii) The Applicant is entitled to sell the Property.
 - (iv) The Applicant is suffering financial hardship.

- (v) The Applicant intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the Property.
- (vi) It is reasonable to grant an eviction order.

Reasons for Decision

16. Ground 1A of Schedule 3 of the Act provides that it is an eviction ground that the Landlord intends to sell the let property to alleviate financial hardship. The Tribunal may find the ground met if the landlord is entitled to sell the Property, is suffering financial hardship, and intends to alleviate the hardship by selling for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it.
17. Ground 1A was not included in the Notice to Leave. The Tribunal considered the terms of section 52(5)(b) of the Act, and Rule 14, and granted permission to amend the application to include ground 1A, noting that this was not opposed by the Respondent.
18. The Tribunal was satisfied that Ground 1A had been established. The Tribunal took into account the information regarding rent arrears, the Applicant's financial circumstances and the information provided from the selling agent.
19. In considering reasonableness, the Tribunal took into account all the relevant circumstances of the case, including the Applicant's financial circumstances. The Tribunal took into account the Respondent's position that it would be beneficial to her mental health and the welfare of her family to move matters on now, so that she can secure local authority housing. The Tribunal took into account that the Respondent was adamant in this regard, having been given repeated opportunities to consider her position.
20. In all the circumstances, the Tribunal decided that it was reasonable to grant an eviction order.
21. The Tribunal observed that the Applicant's representative would be advised to make any application to amend in writing in advance in future. They would also be advised to ensure that all relevant documentation is provided to the Tribunal well in advance of any CMD, and in accordance with the Rules.
22. The Tribunal would reiterate the position stated by Members during the CMD that the Applicant's representative would be advised to take advice on the proper procedure for gaining entry to a property for the purposes of safety certification and other inspection.

Decision

23. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 26th June 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.

Helen Forbes

Legal Member/Chair

Date: 23rd May 2023