



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/22/0208

Re: Property at 12 Atholl Place, Linwood, Renfrewshire, PA3 3QZ (“the Property”)

Parties:

Mr Robert Forbes McCulloch, 28 Fulbar Crescent, Paisley, PA2 9AS (“the Applicant”)

Mr Jason Gordon Lennie, Mrs Marjan Lennie, 12 Atholl Place, Linwood, Renfrewshire, PA3 3QZ (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 9 May 2022 by tele-conference. The parties were personally present and represented themselves. The Respondents had two supporters – Michelle Stewart of Renfrewshire Council and Yvonne Mackay, Social Worker.
 3. The Applicant moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 10 June 2019. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondents on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 14 July 2021 by way of email. The Applicant required to sell the Property in order to release the equity in the Property. It was submitted that he had suffered a lot of stress and problems with the Respondents, including damage to the Property and rent arrears. The Applicant has other properties which he rents out but for financial reasons, wishes to sell this one. The Applicant has five children, including a baby, and requires the release of equity to aid his financial position. He provided a reference for the Respondents to the local authority on 23 August 2021. He was asked for a further reference in November 2021 but was unable to provide same as the Respondents had refused to allow him access to carry out an inspection.
 4. The Respondents submitted that they were trying to seek rehousing via Renfrewshire Council and as yet had not been successful. They had been offered a property last week but they had turned this offer down as they did not consider that it met their family’s needs. They had appealed the offer and were hopeful that another offer will follow soon. However, they have no timescale in which they may receive another offer as it depends on the local authority’s availability of housing stock. They had tried to obtain private lets but been unsuccessful. They have applied to view a property which has just come on the market and are awaiting to hear back from the private landlord. They have three children – two under five and one due to start school, this year. They submitted that the landlord had failed to provide their reference to the local authority on time which had held up their application.
 5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave by email
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Email from Wright & Crawford, Solicitors, confirming instruction re marketing the Property for sale
- Findings in Fact
6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 10 June 2019;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant is entitled to sell the Property;
- (iv) The Applicant has served a Notice to Leave on the Respondents on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (vi) The Applicant has provided an email from Wright & Crawford, Solicitors, confirming instruction re marketing the Property for sale

- Reasons for Decision

7. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to sell the property and intends to do so within 3 months of the Respondents ceasing to occupy it. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

8. The Tribunal were also satisfied that it was reasonable to grant the order, under the circumstances. Whilst it was unfortunate that the Respondents had declined the Local Authority's offer of housing as the Respondents did not consider it met their needs, the Tribunal also had to balance the Applicant's position and his financial needs. The Tribunal did not consider it reasonable that the Applicant be withheld the right to sell the property and release equity from it for an indeterminate length of time, until another property becomes available by the Local Authority and which the Respondent are prepared to accept.

9. Whilst the Applicant referred to there being damage caused to the Property and rent arrears due by the Respondents, no evidence was lodged in this regard and these issues were not relevant to the application at hand., The Notice to Leave, and the application being considered, were based on ground 1 only and therefore any alleged issues of damage and rent arrears were not considered by the Tribunal in coming to this decision.

- Decision

10. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 9 May 2022