



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

Chamber Ref: FTS/HPC/EV/22/1234

Re: Property at 9A West Kilbride Road, Dalry, KA24 5DY (“the Property”)

Parties:

Ms Lynn Gilmour, Mr John Gilmour, Ms Ceridwen Gilmour, Mr Andrew Gilmour, Forestside Cottage, Lylestone, Kilwinning, North Ayrshire, KA13 7RH (“the Applicants”)

Miss Elaine Thomson- Crawford, Mr James Thomson-Crawford, Ms Helen Evans, 9A West Kilbride, Dalry, KA24 5DY; 9A West Kilbride Road, Dalry, KA24 5DY; 9A West Kilbride Road, Dalry, KA24 5DY (“the Respondents”)

Tribunal Members:

Mrs H Forbes (Legal Member) and Mrs F Wood (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 28th April and 28th June 2022 and submitted under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicants are seeking an eviction order under ground 1 of Schedule 3 to the 2016 Act.
2. The Applicants’ representative lodged a copy of the tenancy agreement between the parties in respect of the Property, which commenced on 7th December 2018, copy Notice to Leave dated 15th October 2021 with evidence of service, stating that an application would not be made before 18th April 2021, evidence of intention to sell, and a section 11 notice with evidence of service.
3. Due to an administration issue, the application was initially served only upon the First Respondent, Mrs Elaine Thomson-Crawford by Sheriff Officers on 2nd September 2022. Following representations from the First Respondent, it was

served upon the Second and Third Respondents by Sheriff Officers on 29th September 2022.

4. Written representations were lodged by the First Respondent on 12th and 22nd September 2022.
5. Written representations were lodged on behalf of the Applicant on 13th and 17th October 2022.
6. A Case Management Discussion ("CMD") took place by telephone conference on 20th October 2022. The Applicants were not in attendance and were represented by Ms Stewart, Robb Residential. Mr and Mrs Thomson-Crawford were in attendance. Mrs Evans was not in attendance.
7. The Respondents indicated that they were opposing the order. Mrs Evans is elderly and in poor health, and the Respondents' daughter, who lives with them, is unable to work and is in poor health. They have been seeking alternative accommodation with no success.
8. Responding to questions from the Tribunal regarding the issue with the date at part 4 of the Notice to Leave stating 2021 instead of 2022, as raised by the Respondents, Ms Stewart said it was simply a typo and the accompanying email stated the correct date, leaving the Respondents in no doubt about the date on which they had to leave.
9. The Tribunal adjourned the CMD to an evidential hearing on reasonableness, and to allow Mr Thomson-Crawford, Mrs Evans, and any other party to take advice, should they so wish.
10. By email dated 31st January 2023, the Respondents' representative informed the Tribunal as follows:

I will attend the hearing of the above case on 02/02/23 on behalf of the respondents. After discussing the case the respondents no longer oppose the application for an eviction order. I would like to request the tribunal grant a delay in the execution of the order until 2nd April 2023 to allow time for the local authority to source a suitable tenancy for the respondents.

The Hearing

11. A hearing took place by telephone conference on 2nd February 2023. The Applicant, Mr John Gilmour, was in attendance and the Applicants were represented by Ms Stewart. The Respondents were not in attendance and were represented by Mr Meek, CHAP.
12. Mr Meek said the Respondents were not disputing the order, but requested a delay in the execution of the order, as set out in the email of 31st January 2023.

13. Responding to questions from the Tribunal, Mr Meek said a homeless application had been accepted by the local authority and there is a reasonable prospect that the Respondents will be offered a tenancy. It may take some time to match their accessibility needs. The Respondents are fully aware that, if a property is not secured by 2nd April 2023, they will be housed in temporary accommodation. They will continue to be supported as required by CHAP.
14. Ms Stewart and Mr Gilmour confirmed they were agreeable to the proposal that an order be granted, with execution delayed to 2nd April 2023. Responding to questions from the Tribunal, Mr Gilmour said the Applicants would be prepared to be flexible in terms of execution of the order, if it required to be delayed for a further matter of days.

Findings in Fact and Law

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- (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 7th December 2018
 - (ii) Notice to Leave was served upon the Respondents on 15th October 2022.
 - (iii) The Notice to Leave contained an error in that the date before which an application to the Tribunal could be made was recorded as 18th April 2021 rather than 18th April 2022.
 - (iv) The error in the Notice to Leave did not materially affect the effect of the document.
 - (v) The Applicants are entitled to sell the Property.
 - (vi) The Applicants intend to sell the Property for market value or at least put it up for sale within three months of the Respondents ceasing to occupy the Property.
 - (vii) The Respondents are not opposed to the granting of an eviction order.
 - (viii) It is reasonable to grant an eviction order.
 - (ix) It is reasonable to grant an extended period to allow the Respondents to secure alternative accommodation.

Reasons for Decision

16. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the Landlord intends to sell the let property. The Tribunal may find the ground met if the landlord is entitled to sell the Property and intends to do so for market value, or at least put it up for sale within three months of the tenants ceasing

to occupy it. The Tribunal found that the Applicants intend to sell the Property as required by the legislation. The Tribunal was satisfied that Ground 1 had been established.

17. The Tribunal considered that the error in the Notice to Leave did not materially affect the effect of the document. The document had been drafted and dated after the incorrect date had passed. This was an obvious error, and the Respondents could be in no doubt as to the correct date at which an application could be made to the Tribunal.

18. In considering whether it was reasonable to grant the eviction order, the Tribunal took into account the representations of both parties, and the fact that the Respondents were no longer opposing the eviction order. The Tribunal was satisfied that the Respondents are likely to receive suitable accommodation from the local authority and that this matter is in hand. In all the circumstances the Tribunal considered it reasonable to grant the order.

19. The Tribunal decided that it would be reasonable to extend the period before which the order could be executed to 2nd April 2023.

Decision

20. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 2nd April 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

2nd February 2023
Date