



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/22/3278

Re: Property at 8a Whiteford Avenue, Dumbarton, G82 3JT (“the Property”)

Parties:

Mrs Elaine Farquharson, 11 Chapelton Gardens, Dumbarton, G82 2AL (“the Applicant”)

Mrs Caroline Oswald, 8a Whiteford Avenue, Dumbarton, G82 3JT (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

By application, received on 7 September 2022, the Applicant sought an Eviction Order against the Respondent 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.

In the application, the Applicant stated that she had a very good relationship with the Respondent and that the local authority will not assist in re-housing the Respondent unless an Eviction Order has been granted.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 18 December 2017 at a rent of £400 per month, and a Notice to Leave, dated 17 December 2021, 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 20 June 2022.

The Applicant, in an email to the Tribunal of 18 October 2022, stated that she had not yet approached an estate agent or obtained a Home Report, as the house will need to be freshened up before it is put on the market.

On 19 December 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 9 January 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 20 February 2023. The Applicant was present and was assisted by her daughter, Ms Kirsty Farquharson. The Respondent was not present or represented.

The Applicant told the Tribunal that she lives with her son at his house. She does not own any other properties and wishes to sell the present Property as she has retired and needs the proceeds of sale to provide her with financial security in her retirement. She said that she has been in regular contact with the Respondent and has also been in touch with the local authority and with local councillors to assist the Respondent to be allocated a local authority house, but has come up against the obstacle that the local authority will not step in unless there is an Eviction Order in place. She advised that the Respondent lives in the Property with 3 children, the eldest of whom is 9, and that the Respondent herself feels that she and her family have outgrown the Property. The Parties enjoy a very good relationship and it did not sit well with the Applicant that she was having to take this action in order to ensure the local authority step in.

The Applicant told the Tribunal that she had not yet engaged a solicitor or estate agent, as she wished to know the outcome of the proceedings before doing so.

The Tribunal noted the reasons given by the Applicant for wishing to sell the Property, that the Applicant had stated that, without an Eviction Order, the local authority would not assist in re-housing the Respondent and her family and that the Respondent had not provided any written representations or been present at the Case Management Discussion. The last point was of concern to the Tribunal, as the Respondent has 3 young children. The Tribunal noted that the Applicant had said that she was doing all she could to help the Respondent secure alternative accommodation, having been in contact with the local authority and local councillors, but there had been no information from the Respondent to the effect that she understands why the Applicant is seeking an Eviction Order and that the Respondent has been seeking to be rehoused by the local authority but has been told that the Council will not assist unless an Eviction Order is granted.

The Tribunal accepted that it would have been premature for the Applicant to expend money on a Home Report, as it only has a short shelf-life, and that she wished to freshen up the Property before putting it on the market anyway, but was of the view

that, in the absence of a letter of engagement from an estate agent or a solicitor, the only evidence of her intention to sell was her statement that she wished the sale proceeds to fund her retirement.

Having considered carefully all the evidence before it, the Tribunal decided that the Applicant had not yet established to the Tribunal's satisfaction that it would be reasonable to issue an Eviction Order at this stage. The Tribunal had no reason to doubt what the Applicant had said about her personal circumstances, but in the absence of a letter of engagement or of evidence from the Respondent to support what the Applicant had said about her being willing but unable to move due to the view taken by the local authority, the Tribunal felt that the reasonableness test had not yet been met. The Tribunal was, however, prepared to continue the application to a further Case Management Discussion to enable the Applicant to provide any further information or documentation, supporting her intention to sell, that she wished the Tribunal to consider and to enable the Respondent, if she so wished, to provide any information she wished the Tribunal to consider in making its final Decision on the application.

On 26 April 2023, the Applicant provided the Tribunal with a copy of a letter of engagement dated 11 April 2023 from SB Property Estate & letting Agents, Dumbarton, confirming that they would instruct a Home Report when the Applicant's tenant vacated the Property. The Respondent did not provide any written representations following the Tribunal's Direction

The continued Case Management Discussion was held by means of a telephone conference call on the morning of 9 May 2023. The Applicant was present and was represented by her daughter, Miss Kirsty Farquharson. The Respondent, Mrs Oswald, was also present.

Miss Farquharson told the Tribunal that the Applicant is 69 and requires to sell the Property to help finance her retirement. The rent does provide her with an income, but the Property requires repair and renovation work, and, along with the requirement to provide annual accounts, she is finding it too much of a burden. The process of evicting the Respondent does not sit well with her and she has tried to assist the Respondent in every way she can.

The Respondent, Mrs Oswald, told the Tribunal that she has been on the housing list for 2 years, 6 months of which had been wasted as the Council had lost her application. She lives in the Property with her 3 children, who are now aged 10, 8 and 4. It is a two-bedroomed house, and her sons share what was probably originally a dining area as a third bedroom, but it has no windows, so has no natural ventilation, which has caused health problems for one of her sons. She accepted that the Property is not big enough for her family.

Reasons for Decision

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.

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 may 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.

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. 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.

The Tribunal noted that the Applicant requires to sell the Property to release funds to finance her retirement and that, whilst it provides her with a rental income, the Property requires repairs and renovation and is becoming a burden to her at her age. The Tribunal also noted that the accommodation is not satisfactory for the Respondent and her family, with 2 children sharing a room that has no natural ventilation. Accordingly, having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order, but the Tribunal decided that it should not be capable of being enforced for a period of two months after the date on which the Tribunal's Decision is intimated to the Parties, in the hope that this additional one-month period would enable the local authority to find suitable alternative accommodation for the Respondent and her family.

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.



Legal Member/Chair

9 May 2023
Date