



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 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/1800

Re: Property at 2 Lawson Avenue, Forfar, Angus, DD8 1LB (“the Property”)

Parties:

Ms Jemma McLaughlin, 3 Eastburn Avenue, Ballymoney, Antrim, BT53 6PL (“the Applicant”)

Mr Sean Michael Davidson, Ms Leanne Hogg, 2 Lawson Avenue, Forfar, Angus, DD8 1LB (“the Respondents”)

Tribunal Members:

Alastair Houston (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in terms of paragraph 1 of schedule 3 of the 2016 Act be made in favour of the Applicant.

1. Background

- 1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of paragraph 1 of schedule 3 of the 2016 Act, that being that the Applicant intends to sell the property. The application was accompanied by, amongst other things, copies of the written tenancy agreement between the parties and the notice to leave given to the Respondents.
- 1.2 A request for further information had been made and documentation supplied in response. The Respondents had not lodged any written representations or documents with the Tribunal.

2. The Case Management Discussion

- 2.1 The case management discussion took place on 30 October 2023 by teleconference. The Applicant was represented by Mrs Fiona Wakem of Wardhaugh Property. The Respondents were personally present.
- 2.2 Mrs Wakem confirmed that the application was insisted upon. The Applicant was seeking to sell the property. The property was affected by condensation dampness and needed substantial repairing works carried out to bring it up to standard. The Applicant could not afford these works and was suffering from ill health. Accordingly, the decision had been taken to sell the property.
- 2.3 The Tribunal raised an issue regarding the validity of the notice to leave served, in particular, that section 3 appeared not to have been completed in that no specifics regarding the ground relied upon were entered. Mrs Wakem advised that she had believed nothing further was required given that the notice stated the ground relied upon in that the Applicant intended to sell the property. The Respondents had been advised in advance of service of the notice of the Applicant's intention.
- 2.4 The Tribunal then heard from the Respondents. Both confirmed that the notice had been received and they understood its terms. There had been communication in advance of the notice to leave to advise them that the Applicant intended to sell the property as she could not afford to carry out the necessary repairs.
- 2.5 The Tribunal then heard further from Mrs Wakem regarding the Applicant's circumstances. She confirmed that the property was the sole rental property owned by the Applicant. She resided in Northern Ireland. She was aware the Applicant was in ill health and debt. Recent correspondence from her had suggested that the stress of the debt was having a detrimental effect on her. Estate agents had valued the property but it could not be marketed for sale without vacant possession. Mrs Wakem did not have any further information regarding the Applicant's financial position beyond the fact that the property was mortgaged. Another property had been offered to the Respondents but they had declined to view it.
- 2.6 The Respondents both confirmed that they wished to move from the property due to its condition. Every room was affected by mould growth and they were concerned as to the effects on their children's health. Mr Davidson advised that he worked full time as a joiner, earning around £536.00 each week. He and Ms Hogg resided with their 4 children, aged between 2 and 16. They had approached Angus Council for assistance but none had yet been provided as no eviction order had yet been granted. The other property offered by the Applicant's representative was not financially viable for them as they could not pay a further deposit. Ms Hogg confirmed that she did not work. She also received child benefit in the sum of £45.00

per week and the couple received Universal Credit, dependent on Mr Davidson's earnings. They would struggle to afford a further deposit but had also been looking for alternative accommodation in the private sector.

3. Reasons For Decision

- 3.1 Turning firstly to the notice to leave, section 62 of the 2016 Act requires that a notice to leave fulfils any requirements prescribed in regulations. Regulation 6 and schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 sets out the prescribed form. Part 3 of that form requires a landlord to set out how the grounds have arisen, stating "It is important that the Tenant understands why you are seeking to evict them". Thus the form requires a landlord to specify which ground they are relying upon, which the Applicant had done in the present case, and also explain the decision in order that fair notice is given to the tenant.
- 3.2 The Applicant had failed to provide any additional details as to the decision taken to sell the property and issue the Respondents with the notice to leave. This was an error in the document. The Tribunal required to consider whether this materially affected the effect of the notice to leave. In the Tribunal's opinion, it did not. It was necessary to consider the background to which the notice had been given. Information had already been given to the Respondent's regarding the Applicant's intention sell the property in advance of the notice being served. Furthermore, the Applicant was not relying on any conduct on the part of the Respondents. There was no breach of the tenancy agreement by them capable of being remedied upon the notice being given. Thus, the Tribunal considered this a minor error capable of excusal in terms of section 73 of the 2016 Act.
- 3.3 The Applicant had served the requisite notice to leave upon the Respondent. She had provided information regarding her intention to sell the property. Accordingly, the Tribunal required to consider whether it was reasonable to grant an order for recovery of possession.
- 3.4 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant had articulated a reason behind the decision to sell. The Respondents wanted to move from the property given its condition, albeit alternative accommodation had not yet been identified. They were aware that they and their children could obtain assistance from the local authority but required the application to be granted before this would be provided. Because of this, the application was not opposed. The Tribunal therefore considered that it was reasonable to grant the order. The Tribunal noted that the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") applied to the present application. Any order could therefore not be enforced prior to 31 March 2024.

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

30 October 2023
Date