



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2303

Re: Property at Flat 2/2 382 Cathcart Road, Glasgow, G42 7DF (“the Property”)

Parties:

Mr Sarbjit Gill, 6 Fernleigh Road, Glasgow, G43 2UE (“the Applicant”)

Mr Muhammad Abbas, Mrs Nazia Abbas, Flat 2/2, 382 Cathcart Road, Glasgow, G42 7DF (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 10 July 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same and the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and proof of service of same.

2. Following initial procedure, on 28 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 26 October 2023 was served on both Respondents by way of Sheriff Officer on 21 September 2023. In terms of said notification, the Respondent was given until 10 October 2023 to lodge written representations. Representations were lodged by email on 9 October 2023 on behalf of the Respondent by Govanhill Law Centre.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 26 October 2023 at 2pm, attended by Mr Paul Scarff of The Eviction Hotline (“the Applicant’s representative” and Ms Lyndsey McBride of Govanhill Law Centre (“the Respondent’s representative”).
5. After introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the fact that the Respondent’s representative had indicated in the written representations lodged prior to the CMD that the Respondent did not wish to oppose the application. Ms McBride confirmed that this was still the case and it was noted that Mr Scarff was aware of this. The Legal Member explained that, although the application is not opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. It was indicated to parties that the Tribunal was satisfied that the application was in order but required some further information regarding the ground of eviction. The Legal Member referred to the letter from MTL Law dated 4 October 2023 referred to in the Respondent’s representations but which had not been lodged with the Tribunal. Mr Scarff confirmed that the letter was from a Director of MTL Law and confirmed that it was dated 4 October 2023 and that his organisation had emailed a copy of same to Ms McBride on 5 October 2023. He stated that the letter confirmed that MTL Law had been instructed to act in relation to the sale of the Property, once vacant possession has been obtained. Ms McBride confirmed that this is what the letter says and that they are accordingly satisfied that it is the Applicant’s intention to sell the Property. In response to a question from the Tribunal, Mr Scarff confirmed that the reason for selling is financial, particularly given that the rental income is now exceeded by the monthly mortgage payments which have increased.
7. Ms McBride was asked to provide some further information regarding the Respondent’s current circumstances and any update on their attempts to obtain alternative accommodation. Ms McBride confirmed that the Property is currently occupied by the two Respondents and one dependant. They are in

receipt of benefits and were quite clear in their instructions that they did not wish to contest this application as they accept the reason for it. They simply wished enough time to obtain alternative accommodation and consider that they will be able to do so in the additional timescale that will be afforded to them as a consequence of The Cost of Living (Tenant Protection)(Scotland) Act 2022 (“COLA”). The Respondent is being assisted by Govanhill Law Centre and have applied for a Housing Association property. Ms McBride advised that the homelessness team of the local authority have not yet become involved as they will generally await there being a definite date for any eviction order being implemented and this is unlikely to be before 31 March 2024. Mr Scarff likewise confirmed his understanding of the likely timeframe for the eviction in terms of the COLA.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 February 2020.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property once he obtains vacant possession.
5. A Notice to Leave in proper form and giving the requisite period of notice was sent to the Respondent by recorded delivery/signed for post on 5 January 2023 and delivered to the Respondent on 6 January 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 2 April 2023.
7. The Tribunal Application was submitted on 10 July 2023.
8. The Respondent does not oppose the application.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of both parties.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was an email from the Applicant himself which had been lodged with the Tribunal at an earlier stage where he confirmed his intention to sell and that he had instructed MTL Law in this regard and that MTL Law had issued a letter dated 4 October 2023 to this effect. It was clear from the oral submissions of Mr Scarff at the CMD that the reasons behind the intention to sell are financial, in that the current monthly mortgage payments, having increased, now exceed the monthly rental income and that the intention is to market the Property for sale as soon as the Applicant has vacant possession. The Respondent did not oppose the application, having taken advice in relation to the matter, and are actively seeking alternative accommodation with the assistance of their representatives. In these circumstances, the Tribunal considered it reasonable to grant the eviction order.
4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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

26 October 2023

Date