



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/23/0649

Re: Property at 63 Elgin Street, Dunfermline, KY12 7SA (“the Property”)

Parties:

Ms Winifred Margaret McEwen, 11f Bonnygate, Cupar, Fife, KY15 4BU (“the Applicant”)

Mr Sean Kitchener, 63 Elgin Street, Dunfermline, KY12 7SA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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 1 March 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 Grounds 1 (landlord intends to sell) and 1A (landlord intends to sell to alleviate financial hardship) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement; the Notice to Leave; the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003; documentation in support of the Applicant’s intention to sell and the financial circumstances behind that.

2. Following administrative procedure and further communications with the Applicant, on 4 September 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 24 November 2023 was served on the Respondent by way of Sheriff Officer on 19 October 2023. In terms of said notification, the Respondent was given until 8 November 2023 to lodge written representations. Representations were subsequently lodged by the Respondent by email dated 1 November 2023. The Respondent also indicated in those representations his intention to attend the CMD.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 24 November 2023 at 2pm. Initially, no parties were in attendance. The Tribunal Clerk contacted the parties by telephone, following which the Applicant, Ms McEwan, joined the call, explaining that she did not appear to have received the email notification providing details of the CMD. The Tribunal Clerk did not receive an answer from the Respondent on his mobile telephone number. The Tribunal delayed the commencement of the CMD to see if the Respondent would make contact or join the conference call but he did not. Having noted that the Respondent had been served with the papers by way of Sheriff Officer and was clearly aware of the date and time of the CMD from the terms of his representations, the Tribunal decided to proceed.
5. After introductions and introductory remarks by the Legal Member, there was discussion regarding the Applicant’s eviction application and the documentation she had submitted in support of that. The terms of the Respondent’s representations were also discussed. It was noted that the Applicant had received a copy of these from the Tribunal Administration and had some comments she wished to make in response. It was noted that the Respondent did not appear to be disputing the Applicant’s intention to sell, but had made some comments in relation to the financial hardship ground that the Applicant was seeking to rely on and appeared to be seeking an extension of the timeframe for eviction to allow him more time to find alternative accommodation.
6. The Legal Member explained that, in addition to the Tribunal being satisfied that the application was technically in order and that the ground(s) for eviction had been established, the Tribunal also requires to be satisfied that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
7. Ms McEwan was asked to address her application. She explained that it is not just that she wishes to sell the Property but, rather, that she has to sell it. The Mortgage with Halifax has run its course and the term of the mortgage had actually expired in May 2022. She has been dealing with the Vulnerable Persons Section of the Halifax, given that she is 75 years old and cannot therefore obtain another mortgage. The tenancy with the Respondent has been

running since 2018 and she let him know some time ago that she would require to sell in order to pay off her mortgage. Ms McEwan advised that she actually put the Property on the market previously, towards the end of last year, as the Respondent had assured her he would move out then. However, he did not do so and she therefore had to take the Property back off the market and wait until she has vacant possession before it can be marketed again. Reference was made to the supporting documentation lodged with the Tribunal, including a Sales Schedule from Abbeyforth Property Management and Terms of Business from Messrs Rollos, solicitors from last year and a letter from The Chamber Practice, solicitors, dated 31 May 2023 confirming their instruction to act in the sale of the Property, which they also state will be marketed for sale as soon as the Applicant has vacant possession.

8. As to financial hardship, Ms McEwan advised that, apart from the mortgage term having ended and her having to repay the capital amount which is now around £69,000, her monthly mortgage repayments have increased 14 times in the last 18 months, due to rising interest rates. That has resulted in her monthly payments rising from just over £250 to over £500. The rent is £380 so there is currently a shortfall of around £120 per month between the rent she receives and the mortgage payments. Ms McEwan confirmed that she has never raised the rent since the commencement of the tenancy and, in fact, during Covid, she allowed the Respondent to pay reduced rent as he was unable to work at times. In addition to mortgage costs, she has other costs in connection with the Property, such as for repairs and maintenance. She confirmed that the Respondent works as a painter and decorator and that it is correct what he says in his representations about carrying out works to the Property on her behalf. However, she thinks he is putting a slant on what he has said which makes it sound as if he did this free of charge. Ms McEwan advised that she has never had the Respondent's bank details and has paid him in cash for work done in the Property, or has, as he says, sometimes allowed him to set the work done against his rent. Ms McEwan stressed that the Respondent has been a good tenant and that he has not incurred rent arrears or anything like that. She likes him and did not want to have to go through the Tribunal to obtain an eviction order but feels that she simply has no other choice. Ms McEwan confirmed that the house she lives in is also mortgaged and that she does not own any other properties that she rents out or have other capital which she could use to pay off the mortgage on this Property. She just lives on her pensions and the rental income from the Property but is having to dip into her other funds now to cover the shortfall mentioned. The current situation is unsustainable for her and the financial hardship is real.
9. As to the Respondent's circumstances, Ms McEwan said that she has sympathy for the Respondent's position as she knows that there are difficulties with the private rented market, as he has stated in his own representations. Ms McEwan does not think that the local authority have been very helpful either and thinks the Respondent may well not be a high priority for local authority housing because he is a young, single male. However, she thinks he will be able to get alternative accommodation if he widens his areas of search, as he is working and earning. Also, it may help move him up the priorities if he is given an eviction date. The Applicant indicated that if an eviction order is granted she

wanted to be fair to the Respondent regarding the timescale to enforce the order, particularly given the time of year.

10. In summing up, Ms McEwan asked for the Tribunal to grant the eviction order sought on grounds 1 and 1A. Although the Respondent suggests in his representations that she does not require to pay her mortgage off, this is not the case. She referred to the various documents she had put in from the Halifax in support of her application and confirmed that, although they have allowed her some more time after the mortgage term ended, she does need to pay it off and to do that, she requires to sell. The rising mortgage costs are contributing to the financial hardship and the situation needs to be resolved sooner rather than later. She is sad that it has come to this but she does not have a choice. It is not that she wants to sell, she has to sell.
11. The Tribunal adjourned to discuss the application and, on re-convening, the Legal Member advised Ms McEwan that the Tribunal was satisfied that the test for Grounds 1 and 1A had been met and that the reasonableness test had also been satisfied. Accordingly, an order for eviction on both grounds would be granted. There was some brief discussion about the procedure to follow and the timescale for enforcement of the eviction order, should that become necessary. It was explained that Ground 1A is not affected by the delay in enforcement in terms of The Cost of Living (Tenant Protection)(Scotland) Act 2022. Ms McEwan was thanked for her attendance and the detailed information she had provided to the Tribunal, both in terms of the documentation lodged and the oral submissions at the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 28 June 2018.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property as soon as possible once she obtains vacant possession.
5. The Applicant is experiencing financial hardship and requires to sell the Property to alleviate same.
6. A Notice to Leave in proper form and giving the requisite period of notice was delivered in person to the Respondent by the Applicant on 9 November 2022.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 10 February 2023.

8. The Tribunal Application was submitted on 1 March 2023.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral submissions made by the Applicant at the CMD.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving in excess of the minimum period of notice of 84 days 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 both grounds of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act) and that the landlord intends to sell to alleviate financial hardship (Ground 1A) were satisfied in that all elements of Grounds 1 and 1A were met. These grounds are as follows:-

“Landlord intends to sell

1(1)It is an eviction ground that the landlord intends to sell the let property.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—

(a)is entitled to sell the let property,

(b)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

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a)a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”

“Landlord intends to sell property to alleviate financial hardship

1A(1)It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the landlord—

(i) is entitled to sell the let property,

(ii) is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph

(2)(a)(iii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(e) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market, and

(f) an affidavit stating that the landlord has that intention.

The Tribunal was satisfied that the Applicant was entitled to sell. It was noted that the title to the Property was registered in her sole name in terms of Land Certificate FFE 91468; that the Applicant was suffering financial hardship, as evidenced by the documentation lodged in support of the application, particularly from her mortgage lender, and the detailed financial information provided by the Applicant herself by way of oral submissions at the CMD; that, based on the supporting documentation, including the letter from the Applicant's solicitor, that the Applicant intends to sell or market the Property for sale for market value within 3 months of obtaining vacant possession and that in order to alleviate financial hardship; and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal was satisfied from the information before it that the Applicant was suffering financial hardship due to the rising costs of her mortgage over the Property, resulting in her bearing a significant shortfall every month between the rent received and the mortgage payment. The Tribunal accepted the Applicant's position regarding her finances and did not consider that she had other options available to her as regards re-mortgaging the Property, given her age, or paying off the existing mortgage from other capital. It was clear to the Tribunal that the Applicant had the intention of selling the Property as soon as possible. Indeed, she had previously put the Property on the market, and incurred costs in that regard, on the basis of the Respondent having indicated to her previously that he would move out voluntarily. The Tribunal considered that the Applicant had been fair to the Respondent, in giving him as much notice as possible of her circumstances and that she would require to sell and that she would have preferred not to have had to apply to the Tribunal for an eviction order. However, her circumstances and the time that had already passed since her

mortgage term had ended in May 2022 now meant that the Applicant had no option but to sell and to recover vacant possession of the Property as soon as possible in order to do so. The Tribunal did, however, also take into account in reaching its decision the representations submitted by the Respondent and the information regarding the Respondent's circumstances that was known to it, including the fact that he had occupied the Property since 2018, had been a good tenant, had carried out work on the Property on behalf of the Applicant and that he is experiencing difficulties obtaining alternative accommodation, due to the current property market and shortages of alternative accommodation. However, it appeared to the Tribunal from his representations, that the Respondent was primarily looking to extend his time in the Property in order to provide him further time to secure alternative housing. Weighing the circumstances of both parties and the likely effects of the Tribunal not granting the eviction order sought by the Applicant in terms of her financial circumstances against the consequences for the Respondent of the order being granted, the Tribunal considered it reasonable to grant the eviction order sought. The Tribunal had sympathy for the Respondent as the tenancy was being terminated due to a change in the circumstances of the Applicant. However, the Tribunal agreed with the submission on behalf of the Applicant that, in the circumstances, she was entitled to sell and would be significantly prejudiced in terms of her financial circumstances if she was unable to do so or if her ability to do so was to be subject to a further lengthy delay.

4. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD and that there was no 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

Date 24 November 2023