



Decision 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/23/2583

Re: Property at 48 Niddrie Marischal Road, Edinburgh, EH16 4LQ (“the Property”)

Parties:

Mr Mohammed Gullam Rabbi, 11/2 Blandfield, Edinburgh, EH7 4QJ (“the Applicant”)

Ms Jacqueline Smith, 48 Niddrie Marischal Road, Edinburgh, EH16 4LQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Currie (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 2 August 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 and proof of service of same; the Section 11 Notice to the local authority in terms of the Homelessness (Scotland)

Act 2003 and proof of service of same; and an Affidavit from the Applicant confirming his intention to sell and the financial circumstances behind that.

2. On 22 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 7 November 2023 was served on the Respondent by way of Sheriff Officer on 3 October 2023. In terms of said notification, the Respondent was given until 23 October 2023 to lodge written representations. Representations were subsequently lodged by email on 18 October 2023 on behalf of the Respondent by Granton Information Centre, indicating that the Respondent was opposing the application.
4. On 24 October 2023, further information regarding the Applicant’s financial circumstances was submitted on behalf of the Applicant by his solicitors, Thorntons Law LLP. In response to this, further representations were lodged on behalf of the Respondent by email on 26 October 2023, indicating that, in view of the further information produced on behalf of the Applicant, the Respondent was no longer opposing the application. The Respondent’s representative also indicated that neither she, nor the Respondent herself, would therefore now be attending the CMD.

Case Management Discussion

5. The Case Management Discussion (“CMD”) took place by telephone conference call on 7 November 2023 at 2pm, attended only by the Applicant’s solicitor, Mr Calvin Gordon, of Thorntons Law LLP.
6. 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 their more recent written representations lodged prior to the CMD that the Respondent did not wish to oppose the application. Mr Gordon was aware of the position. 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.
7. Reference was made to the application and supporting documentation lodged. It was indicated to Mr Gordon that the Tribunal was satisfied that the application was technically in order. Mr Gordon was invited to address the application. He confirmed that the application had been submitted on Grounds 1 and 1A but his primary position was to seek the eviction order on Ground 1A as that would allow earlier implementation of the order. He explained that the Applicant was experiencing financial hardship and requires to sell the Property as a consequence of this. This will release some equity which the Applicant can then

use to repay various debts. Reference was made to the documentation lodged as part of the First and Second Inventories of Productions. Mr Gordon referred to the detailed Income and Expenditure document which shows a significant negative balance in the household finances each month for the Applicant. The mortgage over the Property is interest only and the monthly repayments have substantially increased in line with Bank of England base rates. The Applicant looked into selling the Property with the Respondent as a sitting tenant but, having sought advice from a specialist estate agency, Portilio, was advised that this would result in a substantial reduction in the price that could be achieved. In addition, the Applicant suffers from some health conditions, detailed in his Affidavit lodged, which affects his ability to work, meaning that his income can fluctuate. Mr Gordon submitted that, in view of the foregoing, he considers that Ground 1A is met.

8. Although the Respondent is not now opposing the application and her representative had indicated that she was not now wishing to put forward any arguments in respect of reasonableness, it was noted that the Affidavit of the Applicant does provide some information in respect of the Respondent's circumstances. Mr Gordon was asked if he had any updated information in respect of the Respondent's circumstances and also if the Applicant has engaged directly with the Respondent. Mr Gordon referred to the information in the Affidavit and advised that his understanding is that the Respondent has two children, aged 14 and 15, one of whom suffers from anxiety. The Respondent is understood to work locally and may be in receipt of benefits, including Tax Credits. She is understood to already have been in contact with the local authority as regards obtaining alternative housing. Mr Gordon does not think that the Applicant has engaged with the Respondent as yet in relation to the sale of the Property as he stated it is difficult to proceed with the marketing of the Property and preparation of the Home Report before vacant possession is obtained. Mr Gordon made the point that a Home Report is only valid for a certain period of time and, therefore, it cannot be instructed too early or a second report would have to be obtained. Nor does he think that there have been discussions as yet regarding the date of vacation as the outcome of today was awaited. He commented that if the Respondent's representative had attended today, there could perhaps have been some discussion on this. He indicated that he had previously worked for housing advice organisations and envisaged that the Respondent would not be regarded as being intentionally homeless as the reason for the eviction is not to do with any conduct on her part, such as rent arrears, but rather is due to a change in the Applicant's circumstances. He would expect that the Respondent would therefore be provided with temporary accommodation through the local authority until a permanent property was found. It is appreciated by the Applicant that the Respondent has been a tenant of his for a long time. However, equally, the Applicant does require to obtain vacant possession as soon as possible so that the Property can be sold, due to his own circumstances. Mr Gordon summed up by inviting the Tribunal, if satisfied, to grant the eviction order on Ground 1A, failing which Ground 1. He hoped that the Tribunal would consider Ground 1A to be met and the reasonableness test to be satisfied as he submitted that it would be significantly prejudicial to the Applicant's financial circumstances if there was to be a lengthy delay before the order could be implemented.

9. The Tribunal adjourned briefly to discuss the application and, on re-convening, the Legal Member advised Mr Gordon that the Tribunal was satisfied that the test for Ground 1A had been met and that the reasonableness test had been satisfied. Accordingly, an order for eviction on ground 1A would be granted. Mr Gordon was thanked for his attendance and the detailed information provided on behalf of the Applicant, 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 1 March 2022, although had occupied the Property for many years in terms of previous tenancies.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property as soon as possible once he 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 served on the Respondent by Sheriff Officer on 19 April 2023.
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 13 July 2023.
8. The Tribunal Application was submitted on 2 August 2023.
9. 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 to alleviate financial hardship (Ground 1A of Schedule 3 to the 2016 Act, as

amended) was satisfied in that all elements of Ground 1A were met. Ground 1A is as follows:-

“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 as it was noted that the title to the Property was registered in his sole name in terms of Land Certificate MID53968; that the Applicant was suffering financial hardship, as evidenced by the Affidavit of the Applicant dated 17 April 2023 lodged with the application and the detailed financial information provided in terms of the documentation lodged as productions with the Tribunal, supported by the oral submissions made on behalf of the Applicant at the CMD by his solicitor; that (based on the same foregoing evidence mentioned) the Applicant intends to sell or market the Property for sale for market value within 3 months of obtaining vacant possession 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 noted that the evidence demonstrated that the Applicant had health conditions which affected his ability to work and thereby his income, that there was a shortfall in the household finances of over £700 per month; that the Applicant had required to take a 'mortgage payment holiday as a consequence

but that this had now come to an end; that there had been an increase in the Applicant's monthly mortgage payments from £288 to over £700 as at September 2023 in line with interest rate rises; that the monthly rental in respect of the Property is £750; that the Applicant has other debts; and that there was a letter lodged from Portolio advising that the difference in selling the Property with a sitting tenant rather than vacant possession was likely to result in a significantly lower price being achieved in the region of around £30,000. The Tribunal was persuaded by this evidence that the Applicant was suffering financial hardship and had a clear intention to sell the Property as soon as possible. Having had sight of the further recent documentation narrated above, the Respondent no longer opposed the application, having taken advice in relation to the matter. The Respondent did not wish to put forward contrary information in respect of reasonableness. However, the Tribunal did have regard to the information regarding the Respondent's circumstances that was known to it, including the fact that she had occupied the Property for many years (albeit only since March 2022 in respect of this tenancy), had dependent children and may be on a relatively low income. The Tribunal noted that the Respondent was receiving advice in respect of her housing situation and appeared already to be in contact with the local authority in respect of potential homelessness/alternative housing. She had been aware that the tenancy was potentially being terminated since at least April 2023 when the Notice to Leave was served. 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 his financial circumstances against the consequences for the Respondent of the order being granted, the Tribunal considered it reasonable to grant the eviction order. The Tribunal had sympathy for the Respondent as she had been a tenant for many years and 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, he was entitled to sell and that it would be significantly prejudicial to his financial circumstances if he was unable to do so or if his ability to do so was subject to a lengthy delay. As the Tribunal was satisfied that the requirements of Ground 1A had been met, it did not require to consider the secondary ground, Ground 1, which had also been included in the application.

4. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were now 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.

N Weir

Legal Member/Chair

7 November 2023

Date