



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/23/2832

Re: Property at 9 George Terrace, Loanhead, Midlothian, EH20 9JZ (“the Property”)

Parties:

Fawcett and Madge Limited, 34 Muir Wood Drive, Edinburgh, EH14 5EZ (“the Applicant”)

Miss Emma Louise Sheridan, 9 George Terrace, Loanhead, Midlothian, EH20 9JZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Eileen Shand (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 18 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 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/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and copies of email correspondence dated 16 August 2023 between the Applicant, their

letting agent and their solicitor stating an intention to sell the Property and instructing the solicitor to act for the Applicant in the sale.

2. On 6 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 23 November 2023 was served on the Respondent by way of Sheriff Officer on 19 October 2023. Written representations were to be lodged by 7 November 2023. No written representations were received from the Respondent prior to the CMD.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 23 November 2023 at 2pm, attended by Mr Dan Harcus, Director of the Applicant and his representative, Mr Gregor Fortune of Gregor Fortune Property Limited, letting agents. The commencement of the CMD was delayed for around 5 minutes to allow the Respondent an opportunity to join late but she did not do so.
5. After introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the fact that there appears to be no opposition from the Respondent. The Legal Member explained that, in these circumstances, the Tribunal still required to be satisfied that the ground for eviction relied upon is met, including that it is reasonable in the circumstances for the order to be granted.
6. Mr Fortune was asked to address the application. At the outset, he indicated that it had not been anticipated that the Respondent would attend today. There have been discussions with her previously and it is now the position that rent has not been paid since the Notice to Leave was served. They have tried to reach out to the Respondent to try and agree a payment plan but this has not happened, such that they have required to lodge a separate application with the Tribunal for a payment order. Until notice was served, they have had no issues with the Respondent as a tenant. He explained that the reason the Applicant requires to sell the Property is that the Applicant company was funding a family member’s care home fees. The family member has sadly passed away and the Applicant requires to release equity from three properties, including this one, due to the change in circumstances. One of the other properties is already being sold next month; this one now requires to be recovered and sold; and the third will be sold in due course. Mr Fortune stated that it is unfortunate for the Respondent but needs must. In response to questions from the Tribunal Members, Mr Fortune confirmed that the Property is not actively being marketed as yet but, as per the supporting documentation lodged, Gillespie McAndrew solicitors are to be involved in the marketing and sale of the Property as soon as vacant possession can be obtained. As to the circumstances of the Respondent, Mr Fortune confirmed that the Respondent

resides at the Property with her three children aged between around 3 and 14, that she is a single parent and that she is in receipt of Universal Credit. Mr Fortune has recently been in contact with the benefits' administrators to arrange direct payment of the housing cost element of the Universal Credit. He understands that the Respondent is house-hunting and may have applied for assistance through the local authority but one of the problems so far in identifying suitable alternative accommodation is due to the size of the Property required (3 bedrooms) for the Respondent and her children. He is unaware of any health issues or vulnerabilities of the Respondent but commented that they always look out for that in their dealings with tenants.

7. The Tribunal adjourned briefly to discuss the application and, on re-convening, the Ordinary Member asked a supplementary question regarding the position with the third property mentioned by Mr Fortune in his earlier submissions. Mr Harcus answered the question and explained that a family member is considering purchasing that property.
8. The Legal Member thereafter advised that the Tribunal was satisfied that it was appropriate in the circumstances for it to grant the eviction order on Ground 1 today, as sought by the Applicant. There was brief discussion about the process to follow and that the order is affected by the delay in implementation in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("COLA"). Mr Fortune and Mr Harcus were thanked for their participation in 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 11 September 2020.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property as soon as vacant possession is obtained.
5. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was served on the Respondent by email communication on 17 May 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 12 August 2023.
7. The Tribunal Application was submitted on 18 August 2023.
8. The Respondent did not lodge any representation in respect of the application, nor attend the CMD.

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 at the CMD by the Applicant and his representative.
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 the circumstances known to it, to grant the eviction order sought. Ground 1 is 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.

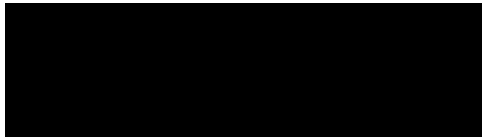
The Tribunal was satisfied that the Applicant is entitled to sell the Property, noting that the Applicant is the registered owner of the Property in terms of Land Certificate MID117283. The Tribunal was also satisfied from the supporting documentation lodged and the oral submissions made by and on behalf of the Applicant by his representative at the CMD that the Applicant intends to sell or market the Property as soon as vacant possession can be achieved and that there had already been instructions to the Applicant's letting agent and solicitor regarding this. The reason behind the Applicant's wish to sell had also been explained in detail to the Tribunal's satisfaction at the CMD. As to reasonableness, the Tribunal weighed up the factors put forward in support of the Applicant's position, in particular the financial reasons for the requirement

to sell due to a change in circumstances. The Tribunal also considered the information provided by the Applicant's representative concerning the Respondent's family circumstances and their understanding that she has already taken steps to obtain alternative accommodation and had stopped paying rent to the Applicant on being served with notice. The Tribunal was aware that, given the COLA protections, there would still be a fairly lengthy period before the order was enforceable and hoped that this would give the Respondent time to secure alternative accommodation. The Tribunal also noted that the Respondent had chosen not to enter into the Tribunal process to take issue with the application or offer any arguments on the reasonableness of the Tribunal granting the eviction order sought. Overall, the Tribunal considered that the factors in favour of granting the eviction order sought by the Applicant outweighed the likely consequences for the Respondent.

4. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD as there was no requirement for an Evidential Hearing in respect of this application.

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

23 November 2023
Date