



Decision and 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

Chamber Ref: FTS/HPC/EV/23/2018

Re: Property at 61 Academy Street, Castle Douglas, DG7 1EE (“the Property”)

Parties:

Mrs Roslyn Henry, C/O The Coachhouse, Kelton, Castle Douglas, DG7 1RU (“the Applicant”)

Mrs Mercedes Ade, 61 Academy Street, Castle Douglas, DG7 1EE (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant is suffering financial hardship, 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 the Tribunal considers it reasonable to grant an eviction order

Background

1. This application for an eviction order was first lodged with the Tribunal on 20th June 2023 and accepted by the Tribunal on 21st August 2023. A case management discussion to take place by audio teleconference on 17th November 2023 at 2pm.

Case Management Discussion

2. The Applicant attended the case management discussion and represented herself. The Respondent did not attend the case management discussion but was represented by Mr Ian Maxwell of Dumfries and Galloway Citizens Advice Service.

3. The Tribunal had sight of the Application, a tenancy agreement, a Notice to Leave, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to Dumfries and Galloway Council, bank statements, bills for work done at the property, an email regarding eviction grounds, emails from Yopa regarding, property marketing and a booking to view the property as well as representations made to the Tribunal. The Respondent had sent in written representations directly and Mr Maxwell was aware of these. Both parties had seen the papers lodged by the other party.

4. The parties entered into a private residential tenancy at the property with effect from 1st February 2022. The Applicant explained that she had acted as a kind of mentor for the Respondent during lockdown as she had mental health and learning difficulties and she had tried to support her. She had believed it would be a good idea for her to move into her flat to assist with supporting her but it had not been successful and the property was too small for the Respondent and her husband. The Applicant was very concerned regarding the vulnerability of both Respondents and was hoping they could be re housed as soon as possible. The Applicant also had financial problems which she said necessitated the sale of the let property.

5. The Applicant explained her own position. She and her husband had recently put their own home on the market for sale. Some years ago they had intended to sell this property to their son in part exchange for his smaller house. The sale could not go ahead due to circumstances beyond the control of the Applicant and her husband. They had not lived together at that property for 8 years and had been involved in a court case with a neighbour over the use of a driveway to the property which had been blocked by the neighbour. The Applicant said that her health had suffered as a result of this and she could not live at that property. She had lived at another flat she had bought to live in herself but this had been sold as she could not afford to live there. She was now living in a property owned by her son who had moved and had taken on a substantial mortgage to keep his old property in order to assist his parents with their living arrangements, but this mortgage was costing £1700 per month and the Applicant could not afford to pay him any rent in her current circumstances and was concerned that her financial situation would soon impact on her son. She had used the funds from the sale of her other flat to pay her son but she still owed him money and rent for the property and was concerned about how long he could keep up the payments of the large mortgage he had taken on in order to retain his former home for his parents to live in. The Applicant said that she had on occasions lived at the family home where her husband had stayed in order to protect the property due to the ongoing dispute with the neighbour, but she said there was no furniture at that property and the heating supply had been cut off and her doctor had advised her not to stay there.

6. The Applicant had lodged information regarding her financial situation and explained that she had debts, had sold everything she could and now needed to sell the let property in order to pay her son rent for the property where she was staying, on which he had taken a large mortgage to assist her. She had declared income of around

£12,500 per year. She set out her outgoings and bills and explained that she had been unable to pay these and had been assisted by family and friends who had lent her money for bills. She and her husband had no savings other than around £100. She had carried out work at the let property and work was still required in order to sell it. Given that the Applicant and her husband's main home was yet to sell and might take some time she had worked out that the best way to deal with her financial difficulties was to sell the rented property and use that money to pay back her son and she hoped that at some stage her main home would be sold and she could use the funds to buy elsewhere.

7. The Applicant explained that although she and her husband had been successful in their court action they had required to pay over £4000 in solicitor's fees after the court action had concluded. There was no loan due in respect of the let property.

8. The Applicant explained that she had put the let property on the market with Yopa earlier in 2023 and she had lodged emails with the Tribunal regarding marketing and viewings. She said that the market value of the let property was £ 97,000. She had had an offer from an interested party but given the delays with the eviction and the work which required to be done she had not heard from this person for some time but was hoping that they were still interested to buy the let property. She had taken the property off the market meantime but had signed a contract with Yopa and would require to pay them further fees. She intended to find a way to do the remaining work required at the property as soon as it was vacant and sell the property as soon as she could after that and certainly put it up for sale within three months of its becoming vacant.

9. The Applicant indicated to the Tribunal that she had handed in a physical copy of the notice to leave to the Respondent and her husband on 28th February 2023 and had explained to them what it meant. She had followed this up with an email with the Notice to Leave attached and believed she had sent this to the tribunal but could not find it during the case management discussion.

10. The Applicant expressed concern about the Respondent and her husband as she said they had packed up and were ready to leave the property and the delays were causing them additional stress and they were already vulnerable.

11. For the Respondent Mr Maxwell indicated that the eviction order was not opposed and it was accepted that a Notice to Leave in proper form and giving appropriate notice had been handed to the Respondent. No issue was taken with the procedures used to support the request for an eviction order. Mr Maxwell said that staying in the property was not assisting the Respondent's health issues and learning needs and if an order was granted he suggested that it would be better if this was not delayed to allow the Respondent and her husband to leave as soon as possible. He suggested that it would be desirable for them to live somewhere where there might be more support for them.

12. Mr Maxwell did not wish to suggest on behalf of the Respondents that it would be unreasonable to grant an order and he did not seek to argue that the eviction ground was not made out, indicating that this was a matter for the Tribunal to consider. He sought to confirm that the eviction ground being used was not subject to the protections under the Cost of Living (Tenant Protection) (Scotland) Act 2022 and the

Tribunal confirmed that if an order was granted there would be no delay in enforcement of the order required by law.

13. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The parties entered into a private residential tenancy at the property with effect from 1st February 2022.

15. The Applicant owns the let property and is entitled to sell it.

16. A Notice to Leave in proper form setting out the eviction ground and giving appropriate notice to the Respondent was handed to her on 28th February 2023 and this notice indicated that the earliest possible date that an application to the Tribunal would be made would be 30th May 2023.

17. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003) was sent to Dumfries and Galloway Council on 20th June 2023 in relation to this tenancy.

18. The Applicant entered into a contract with Yopa early in 2023 to market the property for sale at market value.

19. The Applicant is not currently living at her home which she owns with her husband and this has recently been marketed for sale.

20. The Applicant is living in a property belonging to her son and cannot currently pay her bills and rent due for this property without help from family or friends.

21. The let property requires work to be carried out before it can be sold.

22. The Applicant has suffered and is suffering financial hardship since before the service of the Notice to Leave sent in this application and cannot pay her bills and rent without help of friends or family.

23. The Applicant intends to put the property up for sale at market value as soon as possible after it is vacant in order to sell it to alleviate her financial hardship.

24. The Respondent has a number of health difficulties and does not oppose an eviction order being granted and is seeking to move as soon as possible.

Reasons for Decision

25. The Tribunal was satisfied that an order should be granted in relation to this application. The Tribunal was satisfied that the eviction ground was made out. The Applicant has assets but is clearly in financial hardship pending the sale of the let property which should then allow her to pay her rent and bills pending the sale of the

house she owns with her husband which may take some time given market conditions. The Respondent did not oppose an order and appeared to wish to move to somewhere with better support for the health needs of both her and her husband.

26. Having considered all of the circumstances the tribunal considered that it was reasonable to grant an eviction order in relation to this application.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 1A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant is suffering financial hardship, 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 the Tribunal considers it reasonable to grant an eviction order

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.

V. Bremner

Legal Member/Chair

_____**17.11.23**_____
Date