



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

Chamber Ref: FTS/HPC/EV/23/1151

Re: Property at 102 Houstoun Gardens, Uphall, West Lothian, EH52 5SJ (“the Property”)

Parties:

Mrs Linda Riddell, 25 Auldhill Place, Bridgend by Linlithgow, West Lothian, EH49 6NP (“the Applicant”)

Mr Andrew Burnside, Ms Michelle Williamson, 102 Houstoun Gardens, Uphall, West Lothian, EH52 5SJ; 102 Houstoun Gardens, Uphall, West Lothian, EH52 5SJ (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the respondents

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.

Service of the proceedings and intimation of the Case Management Discussion (CMD) upon the respondents was made by Sheriff Officers on 19 October 2023. The respondents advised the tribunal by email dated 21 November 2023 that they did not oppose the application.

The CMD took place by teleconference on 22 November 2023 at 10.00 am. The applicant was represented by Mr Callum McQueenie of Mavor & Company. The second respondent joined personally and represented the respondents’ interests.

Findings and Reasons

The property is 102 Houston Gardens, Uphall, West Lothian EH52 5SJ. The applicant is Mrs Linda Riddell who is the heritable proprietor of the property and the registered landlord. The respondents are Mr Andrew Burnside and Ms Michelle Williamson. The parties entered into a private residential tenancy in respect of the property which commenced on 25 May 2018.

The notice to leave relied upon in this case is dated 16 December 2022 and stipulates that the earliest an application be submitted to the tribunal would be 15 March 2023. The deemed two days for service is rebuttable and does not apply in this case as the notice to leave was served by Sheriff Officers on the same day that it was dated. The tribunal was satisfied that more than the statutory minimum notice period of 84 days was provided to the respondents and, as such, the notice to leave is valid.

The notice to leave specified an intention to seek eviction based upon ground 1 only. The applicant however now seeks to rely upon ground 1A contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to sell the let property (the same as ground 1) but importantly for the purpose of alleviating financial hardship. This ground was introduced by the amendments brought about by the Cost of Living (Tenant Protection) (Scotland) Act 2022 and removes the additional protections for tenants.

The tribunal considered whether it was fair and reasonable to permit the applicant to amend the application from reliance upon ground 1 to rely upon ground 1A. Ms Williamson confirmed on behalf of the respondents that the application was not opposed and that there was no objection to the proposed amendment, recognising the applicant's difficult financial circumstances. The tribunal therefore allowed the amendment and proceeded to determine the application based upon ground 1A.

The applicant wishes to sell the property due to her financial difficulties. She has provided a written statement which sets out her circumstances in detail. She is retired and rented out the let property, believing that the rent along with other investment income and part time earnings would provide her with a sufficient income. This plan has failed and she has accrued substantial debt. A number of items of documentary evidence are provided to evidence the debt. Bank statements have been produced which show that her account is significantly overdrawn. She also has credit card debt and has taken a loan from a close family member. There is also a letter from her pension company confirming that the pension funds are exhausted and that there is no more income available.

In support of her intention to sell there is a letter of engagement with her agents, Mavor & Company, evidencing the intention to sell the property the property once vacant possession is achieved.

The tribunal was satisfied on the basis of the credible and reliable evidence produced that it is the applicant's genuine intention to sell the let property and, further, that her intention to sell the let property is due to her difficult financial circumstances and her wish to alleviate financial hardship. The tribunal found ground 1A established.

The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.

The respondents are unopposed to the application. They are both in full time employment. They have already taken active steps to prepare to leave the property and have been seeking alternative accommodation. They require an eviction order to be made to enable them to attract a more favourable status to secure another home. They have two school age children, one of whom has some health issues, and an elder adult child living with them in the four bedroomed property.

A relevant section 11 notice has been issued to the relevant local authority. The tribunal was satisfied that it is most likely that the respondents will be provided with alternate accommodation in the event of an eviction order being made against them.

Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order. The respondents are not entitled to the additional time protection under the Cost of Living (Tenant Protection) (Scotland) Act 2022 and are aware of that. The tribunal concluded however, taking account of the respondents' family circumstances and upcoming festive period, that it was fair, reasonable and proportionate that some additional time beyond the standard 30 day period was appropriate. Accordingly the tribunal specified that no eviction be carried out until 12 noon on 12 January 2024.

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

22 November 2023

Date