



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/2558

Re: 322 Dyke Road, Glasgow, G13 4RZ ("the Property")

Parties:

Murdo Robertson residing at 30 Carlibar Avenue, Glasgow, G13 4AP ("the Applicant")

Scott Stevenson, Solicitor, Clarity Simplicity, Solicitors ('The Applicant's Representative')

Ms Louise Taylor and Robert Kane ("the Respondents")

Gwyneth King, Solicitor, the Legal Services Agency, Glasgow ("the Respondents' Representative")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacquie Taylor (Legal Member) Ann Moore (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 27th July 2022. The application states that the ground for eviction was as follows:

'The Private Residential Tenancy commenced on 28th January 2019. Notice to Leave was intimated to the tenants on 4th April 2022. The ground is that the landlord wishes to sell the property. The tenants have refused or delayed to vacate and this action is accordingly necessary.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement. The commencement date of the tenancy was 28th January 2019.
- Notice to Leave dated 4th April 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 1st July 2022.
- Email from the Applicants' Representative to the Respondents dated 18th January 2022 advising them that Notice to Leave will be sent to them on 1st April 2022.
- Email from the Applicants' Representative to Glasgow City Council attaching the Section 11 Notice dated 27th July 2022.
- Section 11 Notice.
- Email from the Applicant's Representative to the Tribunal explaining why the Notice of Leave was sent by recorded delivery mail and acknowledging that the Notice to Leave was delivered to the Tenant on 8th April 2022 and confirming that 85 days notice had been given to the Tenant.
- Sole Selling Agreement between the Appellant and Express Estate Agency dated 17th January 2022.

2. The appeal was determined by different members of the Housing and Property Chamber following a Case Management Discussion on 9th January 2023. The Respondents did not attend the Case Management Discussion. The decision stated: "The Tribunal being satisfied from the written representations and oral submissions that it had sufficient information before it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the 2016 Act.

3. The Respondents applied to the Tribunal for the decision made on 9th January 2023 to be recalled, which application was granted.

4. The Respondents' Representative lodged written representations with the Tribunal on 27th July 2023.

5. The Second Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 28th July 2023.

The Applicant and his representative, Mr Stevenson, attended the CMD.

The Respondents did not attend the CMD but the First Respondent's representative, Ms Rachel Scott attended.

5.1 As a preliminary matter Mrs Taylor explained that the Respondent's written representations and productions had been received on 27th July 2023. They had not been received timeously in terms of the Tribunal Procedure Rules 13 and 22. Ms Scott explained that they had been lodged late as the principal solicitor who had been handling the appeal had to take annual leave. She sought permission to lodge them

late. Mr Stevenson explained that he had not had an opportunity to consider the written representations and advised that he was opposed to them being received late.

The Tribunal adjourned to enable the Tribunal members to consider the representations made. The Tribunal reflected that the previous decision had been recalled in February 2023 and the CMD that had been scheduled for 22nd June 2023 had been postponed at the request of the Respondent's Representative to allow her time to prepare. Also the letter from the Tribunal to the Respondent's Representative dated 6th July 2023 advised that written representations had to be lodged seven days before the CMD. The Tribunal determined that the Respondent's Representative had plenty of opportunity to lodge the written representations and productions and it would be unreasonable to allow them to be lodged late when the Appellant's representative had not been given an opportunity to consider them. Therefore, the Tribunal determined that the Respondent's written representations and productions lodged on 27th July 2023 would not be considered by the Tribunal at the Case Management Discussion.

5.2 Oral Evidence

5.2.1 Mr Stevenson explained that he considered that the eviction application should be granted. The requirements had been met. This was evidenced by the fact that the previous Tribunal had granted the eviction order. The application had been submitted to the Tribunal a year ago.

With respect to the Respondent's representative's position that the Notice to Leave had been invalidly served as it had been served by recorded delivery mail he referred the Tribunal to section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 which states that service can be effected by recorded delivery mail.

The Appellant's mortgage was in arrears. His mortgage provider is threatening to raise proceedings to recover the Property. His mortgage payments are £240 per month more than the monthly rent payments.

The Appellant owes his friend Ramsay Mackie £27,000 and an email from his friend has been produced.

The Appellant needs to sell the Property to alleviate his financial position. He confirmed that the Respondent does not have any rent arrears.

In connection with the Respondent's medical condition he advised that no medical evidence had been provided.

5.2.2 Mr Robertson advised that he is employed. He owns his own home and it is mortgage free. The mortgage payments due on the Property 322 Dyke Road, Glasgow have steadily increased over the last 18 months. He owes £27,000 to his friend Ramsay Mackie. He is in debt. If he is not allowed to sell 322 Dyke Road he will have to sell his own home to pay off the mortgage over 322 Dyke Road and he would then be homeless. He confirmed that the sole selling rights agency agreement with Express Estate Agency dated 17th January 2023 that had been produced was still in place.

5.2.3 Ms Scott advised that she did not consider the Notice to Leave to have been properly served.

Clause 4 of the lease which was signed by both parties states that Notices (including Notice to Leave) should be served by email. The Notice to Leave had been served on the Respondent by recorded delivery mail on 8th April 2022. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply where the parties have contracted to agree a form of service as in this case where the lease states that Notices will be served by email.

She advised that on the basis that the Respondent received the Notice to Leave on 8th April 2023 the date of 2nd July 2022 should have been the date inserted in the Notice to Leave being the earliest date that Tribunal proceedings could start.

She explained that she did not consider that sufficient details of the Appellant's financial position had been provided.

The Respondent Ms Taylor resides in the Property with her three children. Robert Kane moved out of the Property in 2021. Ms Taylor is settled in the area. She suffers from anxiety. Her youngest child suffers from ADHD. She is being supported by the children's primary school. Ms Taylor has been unable to secure alternative accommodation. She has unsuccessfully applied for fifty private lets. There is a shortage of three bedroom properties in the area. She explained that she considered that a hearing should be arranged to enable the Appellant to provide detailed financial vouching.

Mrs Taylor referred to the fact that the previous Tribunal had referred to the sole selling rights agency agreement with Express Estate Agency in their decision dated 9th January 2023. Ms Scott advised that she could not locate a copy in her papers.

6. Outcome following the Second Case management Discussion.

The Tribunal considered if a hearing was required.

The Tribunal acknowledged that the Appellant's position was, in essence, that he is suffering financial hardship and needs to sell the Property. The Tribunal also acknowledged that this is ground 1A of the Private Housing (Tenancies (Scotland) Act 2016 but no application has been made to amend the grounds. In addition, the Appellant has not provided sufficient evidence to support his position. The email from Ramsay Mackie is not sufficient to evidence a loan of £27,000 to the Appellant. Ramsay Mackie and the Appellant should confirm if Ramsay Mackie signed a gifted deposit letter in connection with the sum of £27,000 provided to the Appellant. No evidence of the Appellant's assets, income, outgoings or debts had been provided other than the letter from The Mortgage works dated 7th June 2023. No evidence has been provided that the rent payments made by the Respondent have been credited to the Appellant's mortgage account.

The Tribunal also acknowledged that the Respondent's position was that it is unreasonable to grant the eviction due to her medical and family circumstances. The Respondent had not provided sufficient evidence to support her position.

Consequently, the Tribunal determined that the application should proceed to a hearing to hear evidence from witnesses regarding reasonableness and to allow the parties to provide additional productions.

7. The Hearing

This case called for a conference call Hearing (CMD) at 10.00 on 27th November 2023.

The Applicant and his representative, Mr Stevenson, attended the CMD.

The Respondents did not attend the CMD but the First Respondent's representative, Gwyneth King attended.

The parties' representatives had sent emails to the Tribunal administration on the afternoon of 24th November 2023 advising that they had reached agreement and the Respondents consented to the eviction provided the Applicant did not enforce it until on or after 22nd January 2024.

8. Decision

8.1 Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal found that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal determined that the requirements of Section 109(b) of the Procedure Rules had not been met in full:

(i) evidence showing that the eviction ground or grounds had been met.

The Tribunal determined that the Sole Selling Rights agency agreement with Express Estate Agency dated 17th January 2022, together with the oral evidence of Mr Robertson was sufficient evidence of the Appellant's intention to sell the property for market value within three months of the tenant ceasing to occupy the Property.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 4th April 2022. The parties were agreed that the Respondent received the Notice to Leave on 8th April 2022. The Notice to Leave stated that an application would not be submitted to the Tribunal for an eviction order before 1st July 2022.

The Tenancy commenced on 28th January 2019. As at 4th April 2022 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act. The required period of Notice was 84 days.

In terms of section 26(b) and 26(5) of the Interpretation and Legislative Reform (Scotland) Act 2010 where service is effected by recorded delivery mail it is taken to have been received 48 hours after it was sent unless the contrary is shown. The parties are agreed that the Respondent signed for the Notice to Leave on 8th April 2022. That is the date that the notice period starts. Eighty Four days notice runs to 30th June 2022. Therefore the Notice to Leave correctly detailed the date of 1st July 2022 as being the earliest date the Tribunal proceedings could start.

The Tribunal also determine that the Notice to Leave had been competently served on the Respondent by recorded delivery mail instead of being served by email as section 26(1) of the Interpretation and Legislative Reform (Scotland) Act 2010 states that the section applies where an Act of Parliament requires a document to be served and section 26(2)(b) authorises service by recorded delivery mail. Section 26 does not state that the parties can contract out of the provisions, as suggested by the Respondent's agent.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

8.2 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

8.2.1 The Tribunal had a copy of the Landlord's title GLA 149010 and established that the Applicant is heritable proprietor of the Property and he is entitled to sell the Property.

8.2.2 Evidence had been provided that the Applicant intends to sell the Property being the Sales Agreement between the Applicant and Express Estate Agency in relation to the Property dated 17th January 2022.

8.2.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once he obtains vacant possession.

8.2.4 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was, on balance, reasonable for the eviction order to be granted due to the fact that the Appellant had first submitted the application for eviction to the Tribunal more than one year ago and the fact that the Respondents no longer opposed the application.

8.2.5 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on 22nd January 2024.

9. The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as the Notice to Leave was served on the Respondents before 6th September 2022 and the application was received by the Tribunal before 28th October 2022.

10. 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

27th November 2023