



Decision with 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 (Act)

Chamber Ref: FTS/HPC/EV/23/2435

Re: Property at 80 Forbeshill, Forres, Moray, IV36 1JL (“the Property”)

Parties:

Mr Chris Stepien, 64 Knockomie Gardens, Forres, Moray, IV36 2TN (“the Applicant”)

Mr James Aird, Ms Elaine Barclay, 80 Forbeshill, Forres, Moray, IV36 1JL (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted subject to the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to sell the Property and for eviction and recovery of possession on Ground 1 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 21 July 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 11 September 2018;

3. Notice to Leave dated 24 April 2023 and proof of receipt dated 27 April 2023;
4. Section 11 Notice to Local Authority and proof of sending by email;
5. Signed terms of engagement with estate agents dated 18 August 2023;
6. Sheriff Officer Certificate of Service of CMD Notice on Respondents dated 2 November 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 13 December 2023. The Applicant did not participate but was represented by his Letting Agent. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. The Respondent did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that they should attend and the Tribunal could determine the matter in absence if they did not.

The Tribunal then asked the Applicant's Representative about the Parties particular circumstances so that the Tribunal could assess the question of "reasonableness".

The Applicant is an individual who lives in his own Property in the locality. He lives on his own. He has one other rental Property. The Applicant wished to sell the Property as he had spent a considerable sum of money on repairs and was not making much on the Property.

The Respondents live in the Property on their own. Beyond that the Applicant's Representative could not provide any further information.

Having heard from the Parties the Tribunal had regard to the terms of Ground 1:

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 then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 11 September 2018;
2. The Applicant is the owner of the Property and intends to sell it or at least put it up for sale within 3 months of the Respondent ceasing to occupy it;
3. Notice to Leave had been served on the Respondents on 27 April 2023;
4. Section 11 notification had been served on the local authority;
5. The Applicant intends to sell the Property given expenditure he had incurred on the Property.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought.

The Tribunal sought to make a fair and just decision. The Tribunal determined that it would be reasonable to grant the order in the knowledge that the order would be subject to the suspensive conditions of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**. This would give the Applicant certainty as to when he would have vacant possession and the ability to market and sell the Property. This would also afford the Respondent time to attempt to secure alternative accommodation.

The Tribunal was satisfied that Ground 1 had been established and accordingly granted the application for eviction and recovery of possession.

The Tribunal considered the terms of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** which clearly applied to the application by virtue of the application being received after the commencement date of the Act.

The Tribunal granted the order with the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**.

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.



13 December 2023

Legal Member/Chair

Date