



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/23/2668

Re: Property at 12 Blackhall Street, Paisley, PA1 1TF (“the Property”)

Parties:

Mr Hendrik Lambrecht, Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant”)

Ms Jean McDermid, 12 Blackhall Street, Paisley, PA1 1TF (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (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 7 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 evidence in support of the ground, including a letter from Cochrane Dickie Estate Agents confirming their

instructions to market a number of properties for the Applicant, including this one.

2. Following initial procedure, on 18 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 14 December 2023 was served on the Respondent by way of Sheriff Officer on 2 November 2023. In terms of said notification, the Respondent was given until 22 November 2023 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 14 December 2023 at 2pm, attended only by Mrs Janette McLelland, the Applicant’s representative. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. Mrs McLelland advised that the Applicant originally had a portfolio of 34 properties but decided around the time of the Covid pandemic to start selling up, with a view to retiring. Mrs McLelland explained that the Applicant is her son-in-law and is in his sixties. She acts for him in terms of a Power of Attorney in connection with his affairs, a copy of which is lodged with the Tribunal. She herself is in her late seventies and she indicated that she is losing her sight, which is making things difficult. She stated that they don’t have any option but to sell. They have never put the rent up on their rental properties, including this one which only has a monthly rental of £350. They are not making any money on the properties now. Mrs McLelland explained that they have always tried to be more like social landlords and, indeed, have sold some of their properties to Paisley South Housing Association for use as social housing. Mrs McLelland confirmed that orders for repossession have been obtained already in relation to 17 of the properties and that there are still some to be obtained so that the properties can be sold. Some tenants have moved out voluntarily. In addition, in relation to this Property, there is a mortgage which is due to reach its term in around 18 months and the Applicant is in the position where none of the remaining mortgages can be renewed or extended. Mrs McLelland confirmed

that it is the intention to put the Property on the market as soon as vacant possession is obtained and certainly within the 3 month period in terms of the legislation.

7. As to the Respondent here, Mrs McLelland was not expecting her to attend the CMD today. There has been some communication between them and the Respondent is essentially just waiting for the eviction order to be granted so that she can obtain local authority housing. Mrs McLellan confirmed that it is her understanding that the Respondent has already been in contact with the local authority as she was asked to provide references for the Respondent a few months ago. Mrs McLelland confirmed that the Property is a one-bedroom flat and that the Respondent resides there alone. Mrs McLelland estimates the Respondent to be in her forties and confirmed that she is in receipt of benefits as her rent is paid through the DWP. There have be no rent arrears or other issues with the tenancy. Mrs McLelland is unaware of the Respondent having any health issues.
8. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised Mrs McLelland that the eviction order is being granted and the, the process which will now follow. The Legal Member confirmed that the Applicant is aware of the current delay until 31 March 2024 in eviction orders being enforceable as a consequence of The Cost of Living (Tenant Protection)(Scotland) Act 2022 (“COLA”). Mrs McLelland was thanked for her attendance.

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 24 June 2019.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property once he obtains vacant possession.
5. A Notice to Leave in proper form and giving the requisite period of notice was hand delivered to the Respondent on 6 April 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 31 July 2023.
7. The Tribunal Application was submitted on 7 August 2023.
8. The Respondent did not lodge any written representations and nor did she 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 information provided at the CMD by the Applicant's representative, Mrs McLelland.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite 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 of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent and the Applicant's representative had addressed the Tribunal in detail as to the background circumstances, both personal and financial, for the Applicant's need to sell and in respect of the intention to market the Property for sale as soon as vacant possession is obtained. The Respondent did not appear to wish to oppose the application and the Applicant's understanding is that the Respondent has already been in contact with the local authority regarding seeking alternative accommodation. The Tribunal is aware that, in granting the order today, that there will be a delay of some months before the order can be enforced in terms of the COLA protections which may well provide the Respondent with an opportunity to secure alternative accommodation meantime. In all these circumstances, the Tribunal considered it reasonable to grant the eviction order.
4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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

14 December 2023
Date