



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/23/3309

Re: Property at 1A Castlevue Avenue, Galston, KA4 8JP (“the Property”)

Parties:

Christopher Connell, 3A High Langside, Craigie, KA1 5NB (“the Applicant”)

Ian Orr, Rachel Cliff, 1A Castlevue Avenue, Galston, KA4 8JP (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 14 July 2020.
2. The application was dated 13 September 2023 and lodged with the Tribunal on 19 September 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*. It was dated 13 June 2023 and there was evidence of service by recorded delivery service, being signed for on 14 June 2023, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that

“the landlord intends to sell”. In regard to Ground 1, the body of the notice said: “The costs for mortgage repayments and other costs associated with renting far exceed the rental income” and that “enclosed with this notice is a letter of intent from Greig residential to market the property as soon as property is vacant” (*sic*). The Notice to Leave intimated that an application to the Tribunal would not be made before 11 September 2023.

4. The application papers included a copy of a letter from Greig Residential matching the description of the letter said to have been enclosed with the Notice to Leave. The letter, dated 7 June 2023, was in brief terms but appeared to be from the branch manager of an estate agent noting the Applicant’s contact with them “with regards to the sale of the” Property, confirming that they were “delighted to assist in the marketing of your property”, expressing that they had experience of selling “similar style properties in the immediate area”, and offering to discuss matters and fee arrangements further. Also with the application papers was a copy of the Applicant’s mortgage details stating that there were under eight years left on the mortgage and that the current monthly payment was £860.83. The rent disclosed in the Tenancy Agreement was £500 per month (but the Applicant gave further oral submissions on the current rent due).
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Ayrshire Council on 15 September 2023 was included in the application papers.

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 8 January 2024 at 14:00. We were addressed by the Applicant. There was no appearance from either of the Respondents.
7. The Applicant provided further information in regard to recent contact with both Respondents:
 - a. The first Respondent had not made any contact for around a year but on 21 December 2023 had made contact to say that he intended to leave the Property voluntarily prior to this CMD. The Applicant had thus arranged to visit the Property on the morning of 8 January 2024 and found:
 - i. The front door open and unlocked, though no one appeared to be in the Property when the Applicant called out.
 - ii. That the rooms seemed devoid of the Respondents’ belongings, and the keys for the back door and patio door were placed in their locks (in the inside of the Property).
 - iii. The garden and garage were not cleared, with the garden containing many children’s toys, building materials (the first Respondent being a roofer), plus rubbish.

The Applicant left the Property as he found it and texted the first Respondent following the visit. He received a prompt response from the first Respondent in which he said he intended to clear the garden and garage on 9 and 10 January 2024 with a skip arriving on 11 January 2024

for the clearance of any remaining rubbish. The first Respondent did not, however, go as far as to confirm the date he would be entirely vacated nor offer arrangements for surrendering keys.

- b. The second Respondent was believed to have left the Property a couple of months ago. She had spoken with the Applicant through a voice-call on a messaging app, and confirmed that she and the first Respondent had split up and that she had left the Property, but she did not provide a forwarding address or formally confirm any termination of her tenancy rights.
8. We noted that a Sheriff Officer instructed by the Tribunal had certified intimation of the CMD papers on both the Respondents at the Property address on 10 November 2023. In the circumstances, and in consideration that we had not commenced the CMD until 14:10, we were satisfied to proceed in the absence of the Respondents. Neither Respondent joined the call prior to its conclusion.
 9. At the CMD, on consideration whether or not the application for eviction was insisted upon, the Applicant decided on balance to seek the order. He provided the following additional information:
 - a. Prior to the second Respondent moving out, the Respondents and their two children lived at the Property.
 - b. The Applicant believed that the Respondents' two children had left the Property with the second Respondent, but that they may have returned since then to stay with the first Respondent overnight on occasion. He did not know the children's ages.
 - c. The Property was not specially adapted for the use of the Respondents nor their children, nor did he know of any reason for it being especially suitable for their use (such as proximity to a source of support).
 - d. The Respondents were not in arrears.
 - e. The monthly rent was now £600 a month, but that was still over £260 lower than the monthly mortgage.
 - f. The Applicant did not regard it financially viable to continue to rent out the Property. He noted that with the maximum permitted rent increase, the monthly rent would still be over £200 less than the current mortgage payment (which was an interest-only mortgage).
 - g. The Applicant did not expect to undertake much work to the Property before marketing it and he had set up a meeting with the estate agent for 12 January 2024, in anticipation of vacant possession being provided in early course, to advance marketing of the Property as soon as possible.
 10. The Applicant acknowledged that, as the application was subject to the 2022 Act, the earliest that the Applicant could advance any order for eviction was after the anticipated expiry of the 2022 Act on 31 March 2024.
 11. No motion for expenses was made.

Findings in Fact

12. On 15 June 2020, the Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 14 July 2020 (“the Tenancy”).
13. On or around 13 June 2023, the Applicant drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that the Applicant wished to sell the Property.
14. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 11 September 2023.
15. A copy of the Notice to Leave was served on the Respondents by recorded delivery post by the Applicant on or around 13 June 2023, being delivered to them on 14 June 2023.
16. Clause 3 of the Tenancy Agreement provided for notices to be served in hard copy by recorded delivery.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 19 September 2023.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Ayrshire Council on 15 September 2023.
19. The Applicant instructed Greig Residential in regard to marketing the Property for sale on or about 7 June 2023 and remains in contact with them in regard to advancing such marketing as soon as he is able.
20. The Applicant wishes to sell the Property with vacant possession in early course. He wishes to discontinue acting as landlord due to the high rate of the mortgage payments due for the Property which, in the Applicant’s opinion, renders it financially unviable for him to continue to rent out the Property.
21. The current rent under the Tenancy Agreement is £600 per month.
22. The current mortgage payment, on an interest-only basis, is £860.83 per month.
23. There are under 8 years remaining on the term of the mortgage.
24. The Respondents resided with their two children at the Property but:
 - a. The first Respondent recently ceased to occupy the Property, has cleared all belongings from within the Property, and is in the process of clearing all belongings and rubbish from the garage and exterior of the Property; and

- b. The second Respondent ceased to occupy the Property, and the children ceased to occupy the Property full-time, in or around November 2023.
- 25. The Property is not specially adapted for the use of the Respondents nor their dependents.
- 26. The Property is not especially suitable for the use of the Respondents nor their dependents due to its location or nature.
- 27. On 10 November 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 8 January 2024 upon the Respondents.

Reasons for Decision

- 28. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondents.
- 29. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...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.*
- 30. The letter from Greig Residential of 7 June 2023 constitutes evidence under paragraph (3)(a), albeit it is in brief terms and suggests much remains to be discussed between the Applicant and the estate agent regarding the terms of their engagement. It was augmented, however, by the Applicant's oral submissions regarding his upcoming meeting with the estate agents. On the basis of the submissions by the Applicant we agreed that paragraphs (2)(a) and (b) were satisfied.
- 31. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted that at present the mortgage payment was over £260 in excess of the current monthly rent and so that, at least at a rent around the current passing rent and even with any permitted rent increase,

it was not financially viable for the Applicant to rent out the Property at present. We accepted that it was an interest-only mortgage and noted that, within a decade, the mortgage term would expire. It was within our knowledge that at that time the capital would be due for payment, which might necessitate a sale of the Property at the expiry of the mortgage term. We thus noted the nature of the mortgage, the current mortgage rate, and the term of the mortgage and accepted the Applicant's view that it was not financially viable for him to continue to rent out the Property. We accepted that the Applicant's desire to cease to be a landlord of the Property was genuine and the reason given for his decision was valid. We were thus satisfied that the Applicant's reason for seeking eviction was reasonable.

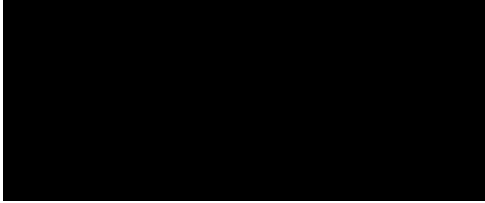
32. There was no argument made by the Respondents against the reasonableness of eviction and both appeared to have left or be leaving voluntarily, though no steps had yet been finalised to provide keys or formally conclude the Tenancy by agreement. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant even if agreed vacant possession may be only days away.
33. We were not minded to grant any additional suspension of the order to evict (and none was requested). The Respondents will have a period of slightly under two months before being under threat of eviction and may have surrendered possession long before then.
34. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: 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 the date of our order (that is 8 July 2024); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the *Cost of Living (Tenant Protection) (Scotland) Act 2022* (currently scheduled for 31 March 2024).

Decision

35. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 Act.

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.



8 January 2024

Legal Member/Chair

Date