



Decision 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/23/2983

Re: Property at 12 Kinnoull Place, Blantyre, G72 0BQ (“the Property”)

Parties:

Mr James Quinn, Wellbrae Cottage, Glassford, ML10 6TX (“the Applicant”)

Ms Jan Orr, Mr Gary Burt, 12 Kinnoull Place, Blantyre, G72 0BQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and David MacIver (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 29 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 eviction ground, namely email correspondence between the Applicant and his estate agents confirming their instructions to market the Property for sale as soon as vacant possession is granted.

2. Following initial procedure, on 9 October 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 9 January 2024 was served on both Respondents by way of Sheriff Officer on 14 November 2023. In terms of said notification, the Respondent was given until 4 December 2023 to lodge written representations. No representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 9 January 2024 at 10am, attended by the Applicant, Mr Jim Quinn, and his wife who was attending in a supportive capacity only. The Tribunal delayed the commencement of the CMD for around 5 minutes to give the Respondent an opportunity to join late but they did not do so.
5. Following introductions and introductory remarks by the Legal Member, it was explained that, although the application is not opposed, the Tribunal still requires to be satisfied that the application is technically in order, that the ground for eviction has been established and that it is reasonable, in all the circumstances, for the Tribunal to grant the eviction order.
6. Mr Quinn was asked to address his application. He explained that he is not a large-scale landlord. He initially had three rental properties, two of which he managed to sell to his sitting tenants, leaving this Property as his sole remaining rental property. There is a buy-to-let mortgage over the Property which he is still paying and there are also tax implications for him. The reason that he is requiring to sell is that he is due to retire in 18 months’ time from the public sector and requires to sell up in advance of this for financial reasons. He plans to market the Property for sale as soon as he is able to. He did offer the Respondent the opportunity to purchase this Property and was prepared to do so for market value, but the Respondent indicated that they were unable to do so. Mr Quinn explained that the Respondent has been aware for over a year that he was requiring to recover the Property and the reason why. However, Mr Quinn stated that he was initially a bit naive about the process and served notice in December 2022. However, he did not serve the correct papers and, having sought advice from an organisation representing landlords, he required to start over and serve fresh notice in May 2023. There has accordingly been quite a delay in reaching this point. The Respondent has remained resident at the Property but have advised him that they have contacted the local authority about housing. They have been told that they should not move out until the Tribunal process has finished and that they will not be accommodated by the local authority until that time.
7. Mr Quinn explained that he has never increased the rent of £500 per month since the tenancy commenced in 2020. There is a history of rent arrears and

he is currently owed over £8,000 in rent. There is a conjoined application for recovery of part of those rent arrears from the Respondent also being dealt with by the Tribunal at CMD today under case reference FTS/HPC/CV/23/3029. No rent at all has been paid by the Respondent since July 2023 which Mr Quinn thinks is linked to the fact that he was pursuing this eviction application. Mr Quinn also stated that he has concerns regarding the condition of the Property. He has not been able to get access to the Property to see the inside but he has been advised that the garden is overgrown and that the curtains have not been opened for some time. As to the Respondent's circumstances, Mr Quinn stated that he does not know a great deal as they are difficult to engage with. He thinks they have children living with them but does not know how many or any details concerning the children. He understands that Ms Orr was a hairdresser but does not know what Mr Burt does nor the Respondent's financial circumstances, including whether or not they are in receipt of benefits. He thinks they will probably move to local authority accommodation but that this will not be available to them until an eviction order is granted.

8. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised that, in the circumstances, the eviction order would be granted today. The Legal Member explained briefly the process which will now follow and regarding the effects of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA") and that the enforcement of the order would be delayed until 31 March 2024, although it would be open to the Respondent to vacate the Property earlier if they were able and wished to do so. Mr Quinn was thanked for his attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 February 2020 (although the tenancy agreement purports to be a Short Assured Tenancy).
3. The Respondent is still in occupation.
4. The Applicant intends to market and sell the Property once vacant possession is obtained.
5. A Notice to Leave in proper form and giving the requisite period of notice was hand-delivered to the Respondent on 15 May 2023 and acknowledged in writing by both Respondents on the same date.
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 8 August 2023.
7. The Tribunal Application was submitted on 29 August 2023.

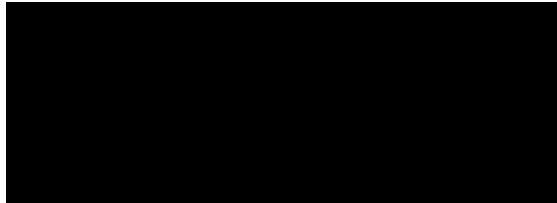
8. The Respondent did not oppose the application.

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.
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 presented to the Tribunal, to grant the eviction order sought. The Tribunal noted that there was supporting documentation with the application showing that the Property would be marketed for sale as soon as vacant possession was obtained. The Applicant had addressed the Tribunal in detail as to the background circumstances requiring the Property to be sold, which were essentially financial. The Tribunal noted that the Respondent had been aware of the Applicant's wish to recover the Property for some time and that, in the first instance, the Applicant had offered to sell the Property to the Respondent if they wished that opportunity. The Tribunal also noted the significant rent arrears owing, that the Applicant had concerns about the condition of the Property and that the Respondent was not permitting the Applicant access for the purposes of inspection. The Tribunal was aware that it had limited information regarding the Respondent's circumstances but noted that the Respondent had chosen not to lodge any written representations nor to attend the CMD, having been properly and timeously notified of same. It appeared therefore that the Respondent was not opposing the application and had informed the Applicant that they had 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 well over two 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 also determined that an order for recovery of possession of the Property could properly be granted at the CMD as there was no opposing information before the Tribunal 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

9 January 2024

Date