



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/23/3418

Re: Property at Flat 4, 6 Wharf Street, Montrose, Angus, DD10 8BD (“the Property”)

Parties:

Mr Gerard Quinn, Mrs Jennifer Quinn, 10 Kerrington Crescent, Broughty Ferry, Dundee, DD5 2TN (“the Applicant”)

Miss Vicki Harrison, Mr Anthony Dow, Flat 4, 6 Wharf Street, Montrose, Angus, DD10 8BD (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant.

Background

1. This was a Case Management Discussion in respect of an application by the Applicant dated 26th September 2023 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to requests from the Tribunal:-
 - A copy of the Tenancy Agreement dated
 - Copy Notice to Leave dated 11th April 2023
 - Evidence of sending Notice to Leave by email dated 11th April 2023
 - Copy S 11 Notice to the local authority and evidence of receipt
 - Copy letter from Robertson and Smith solicitors advising they have been consulted with regard to the sale of the Property dated.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Respondents were both in attendance at 2pm but neither the Applicant nor their agent were present. The Tribunal requested that the clerk try to contact the applicant's representative and he did so and Mr Wilkie of Property Management Ltd attended on the call on behalf of the Applicant.
4. Mr Wilkie advised that he had not received the email intimation of the calling of the case which was surprising as the Tribunal had apparently sent the intimation and papers by email to the correct email address. A short break was granted to allow Mr Wilkie time to familiarise himself with the applications.
5. Mr Wilkie advised that his organisation represented the landlord in this and the conjoined application but had not managed the Property as that was carried out by Right Move in Montrose who did not appear for landlords at Tribunal proceedings.
6. Mr Wilkie advised that the landlords were getting older, were finding it more difficult to finance their buy to let properties, facing increased interest rates and were seeking to downsize their portfolio and wished for that reason to sell this Property.
7. Mr Wilkie indicated that the notice to leave had been served on the tenants and the Tribunal noted the Applicant has lodged a Notice to Leave which has been served on the tenants by email on 11th April 2023. Service by email is agreed in the lease.
 - Mr Wilkie confirmed the Applicant is seeking the order in terms of Ground 1 of Schedule 3 of the Act namely that the applicant wishes to sell the Property and referred to the letter lodged with the application from the solicitors and confirmed that as far as he was aware the Property was mortgaged and that the landlord was seeking to sell quickly.
 - He also advised that the tenants have rent arrears which was subject to a separate action and it would in the circumstances be reasonable for an order to be granted.
 - Ms Harrison spoke on behalf of both tenants. She advised that they understood why the landlord wished to get vacant possession and they had no objections. She explained that they were both out of work, due to the Christmas period and covid, that they are in contact with Angus Council and waiting for an offer of accommodation which if an order were to be granted would give them priority status which would help.
 - In relation to the rent arrears Ms Harrison admitted they were in arrears of rent she explained that they did not receive housing benefit although neither were employed and admitted that her partner had some health issues and she had avoided dealing with situation. She advised that they wished to set up a payment plan and confirmed under suggestions that she may wish to seek advice on benefits and income maximisation that she would be doing so.
 - Ms Harrison confirmed only she and her partner stay at the Property.

Findings in Fact

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 30th July 2021.
2. The tenancy is continuing.
3. A notice to leave dated 11th April 2023 was served on the Respondents by email stating that no proceedings would be raised before 7th July 2023
4. These proceedings were raised on 26th September 2023 and the application included a copy of the Notice to Leave.
5. The application is timeous.
6. A Section 11 notice has been served on Angus Council
7. The Applicants intend to sell the Property and wishes to do so after the Respondents leave.
8. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was served by email which was sent on 11th April to both Respondents email addresses The Application was also accompanied by evidence of how the ground was met namely by lodging a letter from solicitors advising they are instructed in the sale of the Property.
10. Grounds 1 require 84 days' notice in terms of the Act. The Notice sets out the notice period as expiring on 7th July 2023 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
11. The Application was lodged on 26th September 2023. It was therefore lodged after the expiry of the Notice period and before the end of 6 months after the specified date and is therefore an application that the Tribunal can consider.
12. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. "It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord-
 - a. Is entitled to sell the Property and
 - 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.
13. 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
 - c. *And it is reasonable to do so*

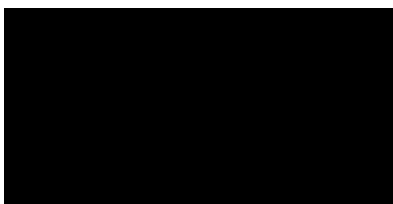
14. The Tribunal accepted the verbal averments of Mr Wilkie that the Applicant's intention is to sell the Property. This is supported and evidenced by the written letter from Robertson and Smith.
15. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Mr Wilkie that the Applicants are finding it difficult due to their age to refinance the 2 houses they own and let out. They are facing increased interest on their mortgage and wish to consolidate by selling this Property and maybe one other. The Tribunal heard there are now considerable arrears of rent and note that there were arrears of £4,925 last August and that the Respondents are not working and have not received housing benefit. Although there was no up to date rent statement Mr Wilkie advised that the arrears have increased. Ms Harrison accepted there are arrears and also advised that she and her partner have contacted the Council and are not opposed to the eviction as they wish to obtain a Council property and need an order of eviction to be given priority status. Ms Harrison advised that she understood the Applicant's wish to sell the Property.
16. Weighing up the evidence and taking note that the Applicants genuinely intend to sell the Property, have financial reasons to do so and the Respondents are not opposed to this and are actively seeking and in discussions with the Council to obtain alternative Council accommodation, the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property.
17. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted.

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

12th February 2024

Date

