



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/23/3090

Re: Property at 31 Haldane Terrace, Dundee, DD3 0HT (“the Property”)

Parties:

Mr Craig Mackie, residing at 23 Haldane Terrace, Dundee, DD3 0JN (“the Applicant”)

Mr Colin Gaskin and Ms Lynsey Flynn, residing together at 31 Haldane Terrace, Dundee, DD3 0HT (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an Application 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 is between the Parties and relates to the Property. The tenancy commenced on 11th August 2022.
2. The Application was dated 4th September 2023. This makes the Application subject to the Cost of Living (Respondent Protection) (Scotland) Act 2022.
3. The application relies upon a Notice to Leave dated 18th May 2023, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondents by recorded delivery mail and first-class mail on 18th May 2023, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in that "the Applicant intends to sell". The Notice to Leave intimated that an application to the Tribunal would not be made before 15th August 2023.

4. The Application papers included a copy of a Home Report in relation to the Property, dated and prepared in August 2023. That report had been instructed by the Applicant in preparation for the sale of the Property. The papers also included a solicitors' fee quotation which the Applicant had obtained in relation to relevant legal services he wished to engage (when he was able to sell the Property).
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council on 4th 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 8th January 2024 at 14:00. The Applicant was represented on the call by his solicitor, Mr J Myles. The Applicant listened to the call but did not give direct evidence to the Tribunal.
7. The Respondents did not join the conference call. Both Respondents had been served with a copy of the Application, together with details as to the date and time of the CMD and details as to how to join that conference call. These papers had been served on both Respondents by Sheriff Officers, at the Property, on 10th November 2023.
8. In terms of a letter from the Tribunal dated 9th November 2023 the Respondents had been required to submit any written representations in response to the application to the Tribunal by 30th November 2023. No such written representations had been lodged by either Respondent.
9. The Tribunal were satisfied in all the circumstances that appropriate notification of the Application, and the CMD, had been served upon the Respondents and determined to proceed with the CMD in the absence of the Respondents.
10. At the CMD, Mr Myles confirmed that the Applicant continued to seek an order for eviction. He explained that the Applicant wished to sell the property to allow him to fund a proposed purchase of a home for the Applicant and his partner. It was explained that the Applicant would be liable to pay a sum of approximately £17000 as additional dwelling supplement tax if he continued to own the let Property at the date of his proposed purchase of the home for himself.
11. Mr Myles confirmed to the Tribunal that the Applicant's sister has made an offer to purchase the Property. She has made arrangements to obtain finance to purchase the Property from the Applicant. The Applicant cannot accept the offer to purchase until he has vacant possession of the Property.
12. It was further explained that the Respondents have not paid rent for the Property since April 2023. The Respondents have accrued arrears of rent in the sum of £6125 as at the date of the CMD.

13. The Applicant pays a mortgage over the Property at a current rate of £755 per month. The Applicant is losing money from the lease of the Property as the Tenants are not paying the agreed monthly rent of £875. Accordingly, the Applicant also wishes to sell the Property to limit his financial exposure and to repay the mortgage over the Property.
14. Mr Myles confirmed to the Tribunal that the Applicant has had no recent contact with the Respondents. The Applicant believes that Mr Colin Gaskin may have moved out of the Property, but this has not been confirmed by either of the Respondents.
15. The Applicant's letting agents have attempted to contact the Respondents to discuss the Applicant's intention to sell the Property, but the Respondents have not engaged with the Applicant's letting agents on these matters. The Applicant's letting agents arranged to inspect the Property in December 2023. At that time the Property was occupied by Ms Lynsey Flynn, along with two children who were believed to be of approximately 15 and 3 years of age.
16. The Applicant's letting agents served a Notice to Leave upon the Respondents on 18th May 2023. At that time the Respondents were advised in writing of where they could seek assistance or advice in relation to the terms of the Notice to Leave. Neither the Applicant, nor their Letting agents, were contacted by the Respondents to discuss the Notice to Leave.

Findings in Fact and Law

17. The Applicant is the owner of the Property registered under Title Number ANG35900.
18. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 11th August 2022 ("the Tenancy"). The rent charged under the tenancy agreement was, and remains, at £875 per month.
19. The Applicant has issued a Notice to Leave dated 18th May 2023 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondents by recorded delivery letter dated 18th May 2023.
20. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 4th September 2023.
21. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon City of Edinburgh Council on the Applicant's behalf on 4th September 2023.
22. The Applicant is entitled to sell the let property and he intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy the property.
23. It is reasonable to issue an eviction order.

Reasons for Decision

24. 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 Respondent.
25. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written representations lodged by the Applicant, as updated by his solicitor at the CMD. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.
26. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) ...the Applicant intends to sell the let property.
 - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the Applicant-
 - (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 Respondent 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 Applicant 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.
27. The Tribunal were satisfied, on the uncontested evidence provided, that the Applicant is the owner of the Property and is entitled to sell the property. The Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the property. The Applicant has put in arrangements which are consistent with his intention to sell, including obtaining a home report and legal fee quotation in connection with the proposed sale. On that basis the Tribunal agreed that paragraphs (2)(a) and (b) were satisfied.
28. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph (2)(c).
29. The Tribunal accepted that the Applicant wishes to sell the Property to allow him to proceed with his plans to purchase an alternative property for himself and his partner. The Tribunal

accepted the uncontested evidence of the Applicant that the Respondents have accrued significant arrears of rent.

30. There was nothing by way of representations or appearance before the Tribunal from the Respondents.

31. The Tribunal determined that it was reasonable to grant an order for eviction.

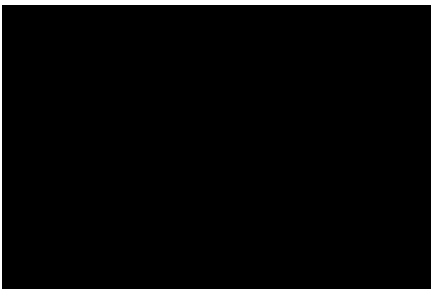
32. The decision of the Tribunal was unanimous.

Decision

33. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

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

8th January 2024

Date