



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/23/3205

Re: Property at 1/3 3 Main Road, Millarston, Paisley, PA1 2TG (“the Property”)

Parties:

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

Mr Christopher Bradley, 1/3 3 Main Road, Millarston, Paisley, PA1 2TG (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (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 11 September 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, and the submission of some further documentation on behalf of the Applicant, on 3 November 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 30 January 2024 was served on the Respondent by way of Sheriff Officer on 4 December 2023. In terms of said notification, the Respondent was given until 22 December 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 30 January 2024 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 he 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 37 properties which he had been planning to sell for around five years, although the process ended up starting around two years ago. Since then, 18 of the properties have been sold, 11 have already been through the Tribunal process and orders granted, and others have still to come to Tribunal. Mrs McLelland stated that it is an ongoing process which she is handling on behalf of the Applicant by virtue of a Power of Attorney. Essentially, this is with a view to both the Applicant and herself retiring. Mrs McLelland further explained that this was a family business and that the Applicant is her son-in-law and is in his sixties. She has always administered the properties on behalf of the Applicant, who has some health concerns. However, she herself is older than the Applicant and is losing her sight, which is making things difficult. Mrs McLelland stated that they don’t have any option but to sell. They have looked after their tenants for the past 19 years and have never put the rent up on the rental properties. They have worked with all of their tenants to explain the situation and the tenants have generally been very understanding. Some of the tenancies have come to their natural end and the tenants have vacated voluntarily. They are not really making any money on the properties now and are selling them for market value. All the properties have mortgages on them, which are being paid off as the

properties sell. Mrs McLelland explained that they have always tried to be more like social landlords and charged low rents. The Applicant is in the position, given his age, whereby he cannot re-mortgage. As it has always been a family business, it is not feasible to them to bring in someone from outside, as their business and personal finances are all tied up together. Nor is the Applicant in a position to continue on in the property business, even with a letting agent appointed to manage in place of Mrs McLelland as he too needs out of the business and to retire for the reasons already stated.

7. Mrs McLelland confirmed that they already have an agent appointed to deal with the sale of this Property and others. It is the intention to put this Property on the market when vacant possession is obtained and within the 3 month period, in terms of the legislation. Mrs McLelland confirmed that it is generally a quick turn-around as their properties are good and usually only require some re-decoration for going on the market.
8. As to the Respondent here, Mrs McLelland confirmed that she was not expecting him to attend the CMD today. He has been aware that this was coming for a few years as they have kept in communication with him. Mrs McLelland stated that the Respondent has been a long-term tenant and resided in other properties of theirs before this tenancy commenced in 2018. The Respondent is essentially just waiting for the eviction order to be granted so that his application for local authority housing can progress, which is a similar position to some of their other tenants. Mrs McLelland confirmed that it is her understanding that the Respondent has already been in contact with the local authority and she does not anticipate that he will have any difficulty with obtaining alternative accommodation through the local authority or a housing association. She will assist him in any way she can with that. She confirmed that the Respondent resides at the Property alone and estimates him to be in his fifties. He is in receipt of benefits and there have be no rent arrears or other issues with the tenancy.
9. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised Mrs McLelland that the eviction order will be granted and 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 17 November 2018.
3. The Respondent is still in occupation.

4. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining 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 11 September 2023.
8. The Respondent did not lodge any written representations and nor did he 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 (84 days) 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. Having questioned the Applicant's representative, the Tribunal was satisfied that other options had been considered by the Applicant but discounted, for the reasons stated above. 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 but that his housing application will not progress further until an eviction order is granted. The Tribunal is aware that, in granting the order today, that there will be a delay until 31 March 2024 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 sought.

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

30 January 2024

Date