



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/22/4368

Re: Property at 80 Redburn, Alexandria, G83 9BS (“the Property”)

Parties:

Mr Michael Annis, 56 Almora Drive, Dumbarton G82 1AE (“the Applicant”)

Ms Andrea Lynch, 80 Redburn, Alexandria, G83 9BS (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Tony Cain (Ordinary Member)

Decision

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

Introduction

1. This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. A Case Management Discussion took place by teleconference on 27 September 2023. The tribunal could not fairly determine the application then. The tribunal issued a Direction requiring the applicant to produce further documentation and the matter was continued to an evidential hearing.
3. The evidential hearing took place on 24 January 2024 at 10.00 am by teleconference. The applicant was personally present and was represented by Renee Anderson of Lomond Letting Ltd. The respondent joined personally and represented her own interests.

Findings and Reasons

4. The property is 80 Redburn, Alexandria G83 9BS. The applicant is Mr Michael Annis who is the registered landlord of the property. The property is owned by his wife, Mrs Frances Stirling or Annis, who provides her consent to the bringing of these proceedings. The respondent is Ms Andrea Lynch who is the tenant.
5. The parties entered into a private residential tenancy in respect of the property which commenced on 12 November 2018. The rent was stipulated at £625 per month.
6. At the time that the application was submitted to the tribunal, it was suggested that the ground relied upon was ground 1A. Ground 1A specifies that it is an eviction ground where the landlord intends to sell the let property to 'alleviate financial hardship'. The purpose of the legislative change to create ground 1A is to allow some landlords relief from requiring to wait an extended period to evict a tenant due to the amendments introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. At the final hearing the applicant's representative accepted that there could be no reliance upon ground 1A. No documentary evidence to establish the relevant test had been produced, despite the tribunal issuing a Direction in September 2023 requiring this.
7. The applicant therefore relied only upon ground 1 contained within part 1, schedule 3 to the 2016 Act. Ground 1 specifies that it is an eviction ground where the landlord intends to sell the let property. This was the ground specified in the notice to leave served upon the respondent.
8. The relevant notice period under ground 1 at the time the notice to leave was served was one of 84 days. The notice has to be prepared in accordance with the provisions of Section 62 of the Act. This requires an additional two days to be added on for deemed service of the notice and an additional one day at the end. The date specified in the notice to leave, being the earliest day of the relevant proceedings being initiated to the tribunal, should therefore be calculated at a total of 6 months plus 3 days from the date of completion.
9. The notice to leave relied upon in this case is dated 6 September 2022 and stipulates that the earliest an application be submitted to the tribunal would be 2 December 2022. The notice to leave was served by email. There is no direct evidence of this but a print of the electronic case management system used by the applicant's letting agent has been

produced which refers to the notice to leave communication being sent on 6 September 2023. There is otherwise evidence that the notice to leave was served by recorded post but there is no corresponding evidence of receipt or 'signed for' data.

10. The notice to leave, served upon the respondent and relied upon in this application is therefore valid.
11. The applicant and his wife seek to sell the let property due to their current circumstances. The applicant has COPD and asthma. His wife has fibromyalgia. These physical health conditions mean that they struggle to live and function within their current property which is over two levels and has stairs. They reasonably require accommodation all on one floor, but the costs of obtaining such bungalow accommodation is outwith their budget unless the let property is sold. The tribunal found this explanation credible and reliable. The respondent does not challenge these circumstances.
12. In support of the intention to sell the applicant has produced a number of items of documentary evidence. They have provided confirmation from a firm of solicitors that they are engaged to sell the property once vacant. That firm of solicitors has confirmed that an offer was received to purchase the property as long ago as October 2022, but the sale could not be advanced due to the respondent's occupation of it.
13. A GP report has been produced to confirm the physical incapacity and mobility problems which the applicant's wife has. This also confirms that the applicant has physical health problems which would render a property on the ground floor to also be beneficial for him.
14. The tribunal was satisfied on the basis of the credible and reliable evidence that the applicant and his wife have the genuine intention to sell the let property. Ground 1 is therefore established.
15. The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order on the basis of ground 1. The tribunal weighed up the respective circumstances and needs of the parties.
16. The respondent is unemployed and is a single parent of three school age children. They are aged 8, 10 and 12 years. The two younger children

attend a local primary school. The eldest child attends a local high school. None of the children have additional support needs.

17. The respondent does not actively oppose the eviction application. She understands and appreciates the circumstances which the applicant and his wife are in. She understands that she will require to move from the property.
18. The respondent has a housing officer who is making determined efforts to seek to source alternative accommodation. Sadly, due to the lack of local authority accommodation, it is likely that the respondent and her children will be allocated temporary homeless accommodation, possibly bed and breakfast accommodation prior to being allocated their own long-term tenancy,
19. A relevant Section 11 notice has been issued to the relevant local authority. The tribunal was satisfied that the respondent will be provided with alternate accommodation in the event of an eviction order being made against them.
20. The tribunal found it reasonable that the applicant and his wife should be afforded the opportunity of selling the property to ingather sufficient funds to source and purchase adequate accommodation to meet their own needs. Whilst the consequences of an eviction for the respondent and her children will have a negative impact, this cannot be avoided and it would not be reasonable for the let property to be maintained for a significant number of further years until the children all attain adulthood and become independent.
21. The protections afforded to the respondent by virtue of the Cost of Living (Tenant Protection) (Scotland) Act 2022 means that no eviction can be carried out until 31 March 2024. The tribunal considered whether an additional period should be afforded to the respondent prior to any eviction being carried out. The tribunal identified that the easter holidays in West Dunbartonshire commence on 29 March 2024 for two weeks. The tribunal concluded that, whilst there would be no good time for the respondent and the children to be impacted upon by an eviction, that the least worst time would be during a school holiday period. Accordingly, the tribunal did not interfere with the specified date of 31 March 2024 as a consequence of the additional protections.
22. Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order.

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.



24 January 2024

Legal Member/Chair

Date