



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/23/2401

Re: Property at 63E Cowgate, Kirkintilloch, G66 1HW (“the Property”)

Parties:

Mr Peter Verrecchia, 84 Monklands Avenue, Kirkintilloch, G66 3BP (“the Applicant”)

Mr Ryan Wilson, 63E Cowgate, Kirkintilloch, G66 1HW (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 17th July 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent and provided with his application copies of the private residential tenancy agreement, notice to leave with proof of service, section 11 notice with proof of service, and personal financial information.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 27th September 2023, and the Tribunal was provided with the execution of service.

The Respondent submitted written representations in advance of the Case Management Discussion.

A Case Management Discussion was held at 10:00 on 2nd November 2023 by Tele-Conference. The Applicant participated and was not represented. The Respondent participated and was represented by Mr Heath of Citizens Advice Bureau.

The Tribunal and the attendees held a helpful discussion which narrowed the issues which the Tribunal needs to consider. The Applicant asked the Tribunal for permission to consider eviction ground 1A in his application in terms of section 52(5) of the *Private Housing (Tenancies) (Scotland) Act 2016*. The Respondent confirmed that he did not oppose that and the Tribunal gave such permission.

The Tribunal noted that personal service had been given of the notice to leave in circumstances where the private residential tenancy agreement provided for service by e-mail. Again, the Respondent confirmed that he did not challenge the validity of service of the notice to leave.

The Respondent confirmed that he wished to resist the granting of an eviction order upon the basis of reasonableness. Both he, and his daughter who reside at the Property with him, suffer from health difficulties. The impact of eviction upon them was such that it would be unreasonable to grant the order sought.

The Applicant explained that he required to sell the Property upon the ground of financial hardship. Due to increases in mortgage costs and an impending common repair scheme, he simply could no longer afford to keep the Property and rent it out.

In these circumstances, the Tribunal needed to consider all of these issues. To do that, it needed to hear evidence at a Hearing from the parties. The Tribunal also needed to hear more detailed evidence from the parties about their circumstances and the effect upon them if the Tribunal was to grant or refuse the order in the terms sought by the Applicant.

The Tribunal discussed with the parties and Mr Heath the method by which a Hearing would be conducted, and all parties expressed a preference for a face-to-face Hearing at Glasgow Tribunals Centre.

Both parties submitted written representations in advance of the Hearing.

The Hearing

A Hearing was held at 10:00 on 7th February 2024 at Glasgow Tribunals Centre. The Applicant participated, and was represented by Ms Hanna, letting agent. The Respondent did not participate and was again represented by Mr Heath of Citizens Advice Bureau.

Ms Hanna invited the Tribunal to grant the order sought on ground 1A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Ms Hanna explained that the Applicant required to sell the Property to alleviate financial hardship. The Property was

his former home until he and his wife moved to their current residence. He had kept the Property to rent out as an investment to provide income in his retirement.

However, his mortgage lender had removed its permission for him to let out the Property, and the Applicant had produced documents from his mortgage advisors stating that due to the type of property and its proximity to fast food outlets no other lender would provide a mortgage to him allowing him to let out the Property out.

The mortgage payments and other repair and maintenance costs now exceeded the rental, so the Applicant was suffering ongoing losses. Those would become worse over time as the block of which the Property was part was now in poor condition and required extensive remedial work.

Further to those issues, the Applicant's lender would likely seek to recover possession of the Property due to the Applicant's breach of his mortgage terms by letting it out if he did not obtain the order sought.

Mr Heath advised the Tribunal that he and the Respondent had now had a more positive response to the Respondent's request for local authority housing. The Respondent accepted that the Applicant had good grounds to wish to sell the Property to alleviate financial hardship and did not oppose the order sought for that reason.

Mr Heath invited the Tribunal to provide that the order sought should not be enforced for a period of two months to allow him and the Respondent to progress matters with the local authority.

Ms Hanna confirmed that the Applicant was sympathetic to the Respondent's situation and was content with that proposed delay in enforcement. She advised that the Respondent had been a responsible and good tenant of the Property.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 1A of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship. The Tribunal may find that this ground applies if the landlord (1) is entitled to sell the let property, (2) is suffering financial hardship, and (3) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (4) the Tribunal is satisfied that it is reasonable to issue an eviction order.

The Tribunal was satisfied that ground 1A had been established. The landlord was entitled to sell the Property, was suffering financial hardship, and intended to sell it to alleviate that hardship. The Respondent did not dispute these matters.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order. As requested by the Respondent, and with the consent of the Applicant, the Tribunal provided that its order not be enforced for two months from the date hereof.

Decision

In these circumstances, the Tribunal made an eviction order against the Respondent in this application.

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.

N Kinnear

7th February 2024

Legal Member/Chair

Date