



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/23/2628

Re: Property at 36 Hornbeam Road, Viewpark, Uddingston, Glasgow, G71 5HW (“the Property”)

Parties:

Mrs Mary Robertson, Mr John Robertson, 241 Springfield Road, Glasgow, G40 3LF (“the Applicants”)

Miss Hannah Gillan, 36 Hornbeam Road, Viewpark, Uddingston, Glasgow, G71 5HW (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for an eviction order received on 4th August 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 Applicants sought an eviction order in relation to the Property against the Respondent and provided with their application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, and correspondence from an estate agent regarding the sale of the Property.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016* and the

Coronavirus (Scotland) Act 2020, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4th December 2023, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 30th January 2024 by Tele-Conference. The Applicants participated and were not represented. The Respondent did not participate, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants invited the Tribunal to grant the order sought on ground 1 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Tribunal noted that the notice to leave relied upon ground 1A. The Applicants explained that they intended to sell the Property but did not seek to argue that was to alleviate financial hardship. They had ticked the ground 1A box by mistake instead of the box for ground 1 on the notice to leave.

The Tribunal confirmed with the Applicants that they understood that ground 1 was subject to the delay in enforcement provisions of the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, but that ground 1A was not.

The Applicants confirmed that they understood the consequences of those provisions and asked the Tribunal for permission to include ground 1 in their application as a stated basis on which an eviction order is sought in circumstances where ground 1 was not stated in the notice to leave.

The Tribunal considered there was no prejudice to the Respondent in granting permission to proceed with an application under ground 1 and gave its permission for that ground to be included in this application in terms of section 52(5)(b) of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Applicants explained that the Respondent is the ex-partner of their son. She lives in the Property with the Applicants' two grandchildren. The Respondent has not paid any rent for 15 months, and the Applicants will struggle financially without rent income as they are both retired, which is the reason that they wish to sell the Property. The Respondent has told the Applicants that she is awaiting being re-housed by the local authority having made application to it for that to take place.

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 1 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to sell the let property. The Tribunal may find that this ground applies if the landlord (1) is entitled to sell the let property, (2) 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, and (3) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

The Tribunal was satisfied that ground 1 had been established. The landlord was entitled to sell the Property and intended to sell it.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

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.



Legal Member/Chair

30/01/2023

Date
