

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3220

Re: Property at Flat 3/3, 15 Victoria Road, Glasgow, G42 7AB (“the Property”)

Parties:

Mr Stephen Smith, 74 Stamperland Avenue, Glasgow, G76 8HA (“the Applicant”)

Mrs Zohra Noreen Ahmed, Flat 3/3, 15 Victoria Road, Glasgow, G42 7AB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 11 August 2023 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave and a Section 11 Notice together with other documents in support of the application. During the course of correspondence with the Tribunal administration the Applicant sought to add an additional ground namely Ground 1A of Schedule 3 of the 2016 Act.
2. By Notice of Acceptance dated 8 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 14 December 2023.

The Case Management Discussion

4. A CMD was held by teleconference on 8 February 2024. The Applicant attended in person supported by his wife Mrs Suzanne Smith. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
5. The Tribunal was advised that the Respondent had commenced her current tenancy of the property on 22 May 2021 but that she had lived in the property in total for about 8 years and that the tenancy had previously been in the Respondent's husband's name.
6. The Tribunal noted that the Respondent had been served with a Notice to Leave by registered post on 3 May 2023 that provided that the Applicant was intending to sell the property and that proceedings would not be raised before 29 July 2023.
7. The Tribunal was also noted that a Section 11 Notice had been sent to Glasgow City Council by email on 8 September 2023.
8. The Applicant explained that as a result of the mortgage over the property increasing to £1197.00 per month plus a factor's fee of £100.00 per month, after receipt of rent less the letting agents' fee there was a shortfall of £760.00 each month. The Applicant said that this loss was not sustainable and was causing financial hardship. He explained that he had to rely on a bank overdraft to meet the monthly mortgage payments and he was coming close to defaulting on the payment. The Applicant said that he owned one other rental property that was just breaking even between income and expenditure. The Applicant explained that he was retired from the education sector with a pension of about £22000.00 per year and that his wife was in full time employment as a facilities manager with an income of £29000.00 per year.
9. The Tribunal was told that the Respondent worked from home and that her husband was a photographer. The Applicant said that they had attended a meeting with the Respondent's husband at the letting agents' offices and had explained the situation but subsequently there had been little communication although about three weeks previously the Respondent had asked the Applicant for a reference and had advised that she would be moving out of the property in the near future.
10. In response to a query from the Tribunal the Applicant said that the Respondent had a two-year-old child living with her and her husband. He also confirmed that the rent was paid up to date although often received late.

11. The Applicant confirmed he had not yet instructed estate agents. He said he had raised with the Respondent's husband the prospect of them purchasing the property but no offer had been forthcoming and he did not think they could afford the property. The Applicant went on to say that he did not want to sell the property with a sitting tenant as he believed he would already take a loss and having a tenant would lower the price even more.
12. The Applicant asked the Tribunal to allow the additional ground 1A and grant the order sought.

Findings in Fact

13. The Respondent commenced a Private Residential Tenancy of the property on 22 May 2021 but has lived in the property for about eight years.
14. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 3 May 2023.
15. A Section 11 Notice was sent to Glasgow City Council on 8 September 2023.
16. The Applicant is retired and has a pension of £22000.00 per year.
17. The Applicant's wife is in full time employment with earnings of £29000.00 per year.
18. There is a Standard Security over the property that costs £1197.00 per month.
19. The Applicant incurs a Factor's fee for the property of £100.00 per month.
20. The Applicant receives net rent from the property of £540.00 per month.
21. The Applicant is struggling to meet his financial outgoings and requires to sell the property to alleviate financial hardship.
22. The Respondent lives in the property with her husband and 2-year-old child.
23. The Respondent is in employment and her rent is paid up to date.
24. The Respondent has intimated to the Applicant that she intends to vacate the property in the near future and has asked for a reference.

Reasons for Decision

25. The Tribunal was satisfied from the documents submitted and the oral submissions that the parties entered into a Private Residential tenancy that commenced on 22 May 2021. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of

Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Glasgow City Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that the Applicant was suffering financial hardship as a result of the very high monthly mortgage paid on the property and that in the circumstances it should exercise its discretion and allow the Applicant to add the additional ground 1A of Schedule 3 of the 2016 Act to the application in terms of Section 52 of the 2016 Act.

26. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. In reaching its decision the Tribunal took account of the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. The Tribunal also noted that the Respondent had advised the Applicant that she intended to vacate the property in the near future and had asked the Applicant for a reference. The Tribunal also noted that the Applicant and his wife had limited incomes and were reliant upon an overdraft to meet the monthly mortgage on the property. The Applicant was incurring a substantial loss from the property each month which was not sustainable in the long term and therefore the Tribunal was satisfied that it was reasonable in the circumstances to grant the order sought under both grounds 1 and 1A of Schedule 3 of the 2016 Act. The Tribunal noted that the order would be subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 so the earliest date for enforcement would be after 31 March 2024.

Decision

27. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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

Date

