



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/23/3983

Re: Property at 133 Mingulay Street, Glasgow, G22 7ED (“the Property”)

Parties:

Mr Neil Baxter, 89 Berrymeade, Surrey, KT21 1SF (“the Applicant”)

Ms Lisa Dilworth, 133 Mingulay Street, Glasgow, G22 7ED (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Nick Allan (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 eviction should be granted.

Background

1. On 8th November 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 1st December 2019 and a rent of £575 per month;
 - ii. Copy Notice to Leave dated 7th August 2023;
 - iii. Copy receipt dated 7th August 2023 signed by the Respondent accepting hand service of the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

- v. Emails with Allen & Harris concerning estate agency;
 - vi. Letter from Clark Boyle, Solicitors dated 7th August 2023 confirming they are instructed in the sale.
3. The Application was served on the Respondent by Sheriff Officers on 22nd December 2023.
 4. The Respondent sent an email to the Tribunal dated 8th January 2024 confirming that she was not opposing the eviction.

Case Management Discussion

5. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Ms Janice McDade. There was no attendance by the Respondent or any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Ms McDade sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the Applicant intended to sell the property. Notice had been served and the application made to the tribunal.
8. The Tribunal were satisfied that the ground had been established and asked Ms McDade to address the Tribunal on reasonableness. Ms McDade said that the Applicant was aged 70 and looking to retire as a landlord. He had three properties and intended to sell one each year. The mortgage on this particular property had expired and a bridging loan had been taken to pay off the balance to the lender.
9. Ms McDade said that the Respondent was a single parent with two children. She had been a good tenant. She had expressed a desire to obtain a lease in the social housing sector but had told Ms McDade that she could not be rehoused until an eviction order had been issued.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 1st December 2019;
- c. A Notice To Leave, dated 7th August 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 22nd December 2023;

- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicant is aged 70 and looking to retire as a landlord;
- h. The mortgage which the Applicant had over the property has expired and a bridging loan has been taken to repay the balance;
- i. The Respondent has indicated that she is not opposed to the eviction order being granted.

Reasons for Decision

10. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

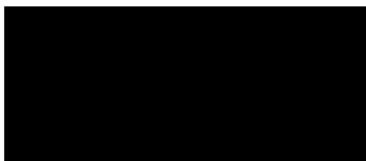
“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

11. The Tribunal now has to decide if it is reasonable to grant the eviction order.

12. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the emails from Allen & Harris and the letter from Clark Boyle. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s reasons for wishing to sell, and noted that the Respondent did not intend to oppose the order being granted. The Tribunal considered in all those circumstances that it was reasonable to grant the 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.



Legal Member/Chair

15 February 2024

Date

