



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/23/2835

Re: Property at Flat 2/1, 35 Rossendale Court, Glasgow, G43 1SL (“the Property”)

Parties:

Mr Afraz Munsha, 52 Albert Road, Glasgow, G42 8DN (“the Applicant”)

Mrs Sundas Jabeen, Mr Ali Raza Mohammed, Flat 2/1, 35 Rossendale Court, Glasgow, G43 1SL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the action should be dismissed.

Background

1. On 18th August 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 Respondents from the property, using Ground 1 of Schedule 5 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 27th November 2021 and a rent of £575 per month
 - b. Copy Notice to Leave dated 17th May 2023;
 - c. Copy email dated 17th May 2023 to the Respondents serving the Notice to Leave;

- d. Section 11 Notice;
3. The Application was served on the Respondent by Sheriff Officers on 19th October 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Hassan of the letting agent, G4 Properties Ltd. There was no attendance by the First Named Respondent. The Second Named Respondent appeared and represented both.
5. 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.
6. The Second Named Respondent said that he knew that the family would have to move out of the property but at the moment they had not been able to find anywhere else.
7. Mr Hassan said that the Applicant was seeking an order for eviction. Due to the cost of living crisis and the increased cost of borrowing he was not able to sustain keeping the property. The letting agent has been liaising with the Respondents, trying to find them another property.
8. Mr Hassan confirmed that he had not lodged any documentation to show that the Applicant wished to sell. He thought that the Applicant had engaged an agent and he would be able to provide evidence of that in the future.
9. The Tribunal asked the Second Named Respondent some questions about his circumstances. He said that the property was a three bedroomed flat, and that he lived there with his wife, his one year old child, his mother, his father and his brother. He was self employed as a private hire driver and his wife was a housewife.
10. The Second Named Respondent said that he had had discussions with both the letting agent and the local authority about finding another property. He was finding it difficult to get anything suitable within his budget. The property market is very harsh and prices are high. His parents are both over 60. No adaptations have been made to the property.
11. The Tribunal decided to continue the case to a Hearing. The Tribunal explained that evidence would need to be led by the Applicant about the ground i.e. intention to sell, and also about reasonableness.
12. On 13th March 2024 the agents for the Applicant lodged a letter from Property Zone, dated 11th March 2024, headed “**Thinking of Selling, Flat 2/1, 35**

Rosendale Court, Glasgow, G43 1SL”, and providing a valuation of the property.

Hearing

13. The Hearing took place by teleconference. The Applicant was represented by Mr Hassan of the letting agent, G4 Properties Ltd, with Mr Imran Haq, also of G4 Properties Ltd on the call. There was no attendance by the First Named Respondent. The Second Named Respondent appeared and represented both Respondents.
14. Mr Hassan said that he was seeking the order for eviction. The Applicant was not present and was not going to give evidence. He did not have any witnesses to call. His case would be presented by way of submission.
15. The Respondent was asked if he was opposed to the order being granted. He said that he did not, but it was clear that he did not understand the question or the legal concept.
16. Considering that the overriding objective of the Tribunal is to act justly, and given that one of the tenets of that overriding objective is to ensure, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take the Tribunal decided that the Hearing should proceed.
17. Mr Hassan presented the case for the Applicant. He referred to the letter from Property Zone as evidence that the Applicant intended to sell the property. In response to questions from the Tribunal he said that the Applicant's position was that he will need to sell the property, which is down to his financial position. He said that the Respondents had been in the property since June 2016, with a monthly rent of £575, and that the rent had not been increased during the period of the tenancy. He said that the costs to the Applicant associated with the property had increased. He said that the Applicant is a small business owner and is not doing well. He has only one rental property that the agents manage for him.
18. The Tribunal asked why, if costs were increasing, the Applicant had not increased the rent. Mr Hassan said that no one was sure how long the legislation restricting rent increases would be in force, and if the Applicant had chosen to increase the rent by the maximum amount he would have been stuck with that amount for another year regardless of when restrictions were lifted.
19. Mr Hassan could not give specifics of the cost increases and increased personal expenses which the Applicant he had. He said they has had a general discussion but had not been provided with specifics. The Applicant's mortgage had increased as had the factoring fees associated with the property. As far as his business was concerned Mr Hassan said that it was not doing so well, but he could not give details of what the business was or how it had declined.

20. Mr Haq intervened to add that the Applicant was thinking of doing some work to the property prior to selling it in order to get a better price. When pressed he said that this would be painting and replacing of floor coverings.
21. Mr Hassan was asked why the Applicant had not attended the hearing to give evidence. He said that he worked a lot of hours.
22. As far as reasonableness is concerned Mr Hassan said that the Applicant had given the respondents plenty of time to find a new property. He had not wanted to raise Tribunal proceedings but had no choice.
23. The Second Named Respondent was asked for his position. He confirmed what he had said at the CMD in that that the property was a three bedroomed flat, and that he lived there with his wife, his one year old child, his mother, his father and his brother. He was self employed as a private hire driver and his wife was a housewife. No one else in the household worked, no one was a student and no one had a disability.
24. The Second Named Respondent said that he had had applied to both Govan Housing Association and South Side Housing Association and that he was on their lists.
25. As neither party had anything further to add the Hearing was brought to a close.
26. After the Hearing the Tribunal checked the title sheet to the property, which discloses that there is no mortgage secured on it.

Findings In Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 27th November 2021;
- c. A Notice To Leave, dated 17th May 2023, was served timeously and correctly;
- d. The Application was served on the Respondents by Sheriff Officer on 19th October 2023;
- e. The Applicant owns the property;
- f. The Property is a three bedroomed flat;
- g. There is no mortgage on the property;
- h. The Respondents live in the property with their infant daughter, and the Second Respondent's parent and brother;
- i. The Respondents have applied to two housing associations for alternative housing.

Reasons for Decision

27. The Applicant has brought the application under ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. Said ground is as follows:

- (1) It is an eviction ground that the landlord intends to sell the let property.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
 - (a) is entitled to sell the let property,*
 - (b) 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*
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
 - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
 - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

28. The Tribunal does not consider that the ground has been met. The letter from Property Zone is headed “Thinking about Selling”. Mr Haq said that the Applicant intended to do work to the property before it was sold, but there was no indication of how long this work would take. In addition there was no evidence, which could easily have been taken from the Applicant if he had attended to give evidence, that that the Applicant intended to sell the property for market value, or at least put it up for sale within 3 months of the tenant ceasing to occupy it.

29. In addition, the Tribunal did not consider, even if part 2(b) of the ground had been met, that it would have been reasonable in terms of ground 2(c) to grant the order. Mr Hassan submitted that the Applicant was experiencing financial difficulties and increased costs in relation to the property but he could not provide any figures and had not lodged any documentation regarding the Applicant’s financial position. He made mention of the Applicant having increased mortgage costs, but in checking the title the Tribunal discovered

that the property does not have a mortgage secured on it. Mr Hassan said that he had requested figures from the Applicant but had not received them. Mr Hassan, when questioned about the sale of the Property said that the Applicant "needed to sell" because of his increased costs, but when asked for any details of this or supporting evidence could provide none. The Tribunal, while having a certain sympathy with the position the Mr Hassan found himself in by not having specific information, was bound to wonder why at an evidential hearing nothing specific was produced.

30. There was no suggestion by Mr Hassan that the Respondents were in rent arrears. There is no reason why the Applicant cannot increase the rent in terms of the law.

31. The Tribunal balanced the submissions made by Mr Hassan for the Applicant with those made by the Second Named Respondent. The Respondents have a young child and the Second Respondent's relatives to accommodate. They have attempted to find alternative housing by making applications to several housing associations. They have nowhere else to go.

32. Having weighed the factors the Tribunal did not consider it 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.



18 March 2024

Legal Member/Chair

Date