



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ms Lorna Johnson, 3 Groathill Gardens East, Edinburgh, EH4 2LT (“the Applicant”)

Ms Kirsty Wardhaugh and Mr Konstantinos Gkortzias, 6 Parkend, Bridge Street, Penicuik, EH26 8LN (“the Respondents”)

Tribunal Members:

Ms Susanne Tanner KC (Legal Member) and Ms Eileen Shand (Ordinary Member)

Decision

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

- (1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicant intends to sell the Let Property for market value or at least put it up for sale within three months of the Respondents seeking to occupy it; and that it was reasonable to make an eviction order on account of those facts; and made an order for eviction in terms of Section 51 of the 2016 Act; and**
- (2) that the order should not be enforced before 4 June 2024.**
- (3) The decision of the tribunal was unanimous.**

Statement of Reasons

Procedural Background

- 1. The Applicant made an application to the tribunal on 1 November 2023 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)**

and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).

2. The Applicant provided the following documents in support of the Application:
 - 2.1. Copy Notice to leave dated 7 July 2023;
 - 2.2. Proof of email service of Notice to Leave on 7 July 2023;
 - 2.3. Copy Section 11 Notice and proof of service; and
 - 2.4. Pre-sale market report and budget planner.
3. The tribunal’s administration obtained a copy of the Title Sheet for the Property which showed the Applicant is the registered proprietor.
4. The Applicant later provided a copy of the Private Residential Tenancy Agreement for the Property.
5. The Application was accepted on 5 January 2024 and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion (“CMD”) on 5 April 2024 in relation to the Application.
6. Prior to the CMD both parties sent information to the tribunal.
 - 6.1. On 15 March 2024, the First Respondent sent an email and supporting documents to the tribunal’s administration, which contained sensitive personal information. The tribunal’s administration sent an email to the First Respondent to ask if she consented to her email and documents being sent to the Applicant, in line with the tribunal’s normal practice, or whether she wished to withdraw the information from the case papers. However, due to an administrative error by the tribunal’s administration, that request was not sent to the First Respondent until 3 April 2024, which was two days before the CMD. No response was received from the First Respondent prior to the CMD.
 - 6.2. On 22 March 2024, the Applicant sent additional information to the tribunal’s administration about financial planning for her retirement. A copy of that information was sent to the Respondents by email in advance of the CMD.

CMD: 5 April 2024, 1400h, Teleconference

7. The Applicant attended.
8. Both Respondents attended.
9. The tribunal chair explained the purpose of the CMD to parties.

10. There was a discussion about the email and supporting documents which the First Respondent had submitted. After a short adjournment in the CMD to consider matters, the First Respondent gave consent to the email and documents being shared with the tribunal and the Applicant. The tribunal clerk shared them by email during the CMD and the Applicant confirmed that she had had sufficient time to read and consider the information. The Respondents also confirmed that they had received the information sent by the Applicant to the tribunal on 22 March 2024, discussed above.
11. The Applicant seeks the eviction order to be made.
12. The Respondents stated that they were not opposing the eviction order being made but would like additional time to try to find alternative accommodation because they have not found somewhere else to live. They said that they had been opposing the Application because it had been a struggle to try to find something else but that now they accept that there will be an eviction. They asked whether it would be possible to agree a later date for moving out of the Property. They said that they were looking in the private rented sector as well as making an application for council housing. They said that they have been looking at private lets since the Notice to Leave was served in July 2023 but that it has been difficult to find anything. They said that they have been on the council list since 2019 but are not high priority because they are able bodied and do not have children. They said that Ms Johnson, the Applicant has also filed paperwork with the Council and that they had a meeting with a housing officer at the council offices in Dalkeith on 20 March 2024 to explain the situation. In relation to other steps taken they said that they have looked up the Lothian Housing Directory and had been referred to the organisation Places for People, after their meeting with the Council. Places for People have provided a list of available flats. They said that they have been viewing properties but that there have been issues securing a property because it is a competitive market. They said that both of them work and it would cause a mental strain on the first Respondent and her wellbeing if they had to be out of the Property within 30 days. They said that they have been told by the Council that more time might allow the Council to find a property for them. In response to a question from the tribunal, they said that they have not registered with any Letting Agents to help with the search for private rented sector properties. The Respondents said that they have been told by the Council that their priority for council housing would change if an eviction order issued by the tribunal. They are still searching in the private sector. The First Respondent provided information about her mental health and she said that she does not handle change very well. She said that an extra month to find an alternative property would help because otherwise she might have to take time off work as a result of ill health. She said that she is currently working on a part-time basis by arrangement with the employer.

13. The Applicant said that her previous plans for her retirement have changed completely. A new tax year is about to start and she cannot retire when she is 66. Any monies she does make from the sale of the flat were intended to be put into her pension for the last tax year and this tax year. She said that she gave notice in July 2023, almost 10 months ago. She suggested that there was no guarantee that additional time would make any difference in terms of the Respondents finding somewhere. She said that she was surprised that the Respondents have not registered with any letting agents to help them with their property search. She outlined the ongoing costs of the Property which she has to meet on a monthly basis. There is a shortfall between the rent and the outgoings. She said that the landlord's insurance has more than doubled this year and that the landlord registration is due again. The monthly outgoings are in excess of £900. The rent is £540. The shortfall is around £400 to £450 per month. She said that she is having to meet the shortfall from her income. In addition the safety checks will become due and there are maintenance costs. She said that this is her only rental property and that she is still in employment. In response to a question from the tribunal about whether any consideration has been given to a possible sale of the property with sitting tenants, she said that that would not be her preferred route. When she consulted with Neilsons about selling the Property it was on the basis of vacant possession. She said that while she still wishes to seek the eviction order, if an extra month would assist the Respondents in finding another property she would consider that.

14. The tribunal makes the following findings-in-fact:

- 14.1. The Applicant is the registered proprietor of the Property.
- 14.2. There is a private residential tenancy agreement between the Applicant and the Respondents for the Property which started on 14 September 2019.
- 14.3. The monthly rental is £525 per calendar month.
- 14.4. On 7 July 2023, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondents.
- 14.5. The Applicant has given the Respondent at least 84 days' notice that she requires possession.
- 14.6. The Application to the tribunal was made on 1 November 2023.

- 14.7. It is no longer financially viable for the Applicant to retain the Property as she is meeting the monthly shortfall of around £400 per calendar month from her monthly income.
- 14.8. There are additional costs in connection with the Property including safety certification and maintenance.
- 14.9. The Applicant wishes to retire and the sale of the Property forms part of her financial planning for retirement.
- 14.10. The Applicant intends to sell the Property with vacant possession as soon as possible.
- 14.11. The Applicant has consulted a solicitor and estate agent and obtained a quote for selling the Property with vacant possession.
- 14.12. The Respondents do not oppose an eviction order.
- 14.13. The Respondents do not have an alternative property yet and wish a period of two months from 5 April 2024 to seek alternative accommodation.
- 14.14. The Respondents have not registered with a letting agent for their private rented sector property search.
- 14.15. The Respondents had a meeting with the housing office at the local authority on or about 20 March 2024 and there is a possibility that they will be allocated local authority housing.

15. Findings in fact and law

- 15.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.
- 15.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

Discussion

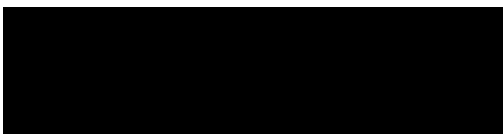
16. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

17. In relation to reasonableness, the Respondents do not oppose the eviction order and simply seek more time to find local authority, or private rented sector housing.

18. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case but that enforcement of the order should be suspended until 4 June 2024 to allow the Respondents further time to seek alternative accommodation.

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.



5 April 2024

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair