



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/23/4423

Re: Property at 57A Crossgate, Cupar, Fife, KY15 5AS (“the Property”)

Parties:

Mr Robbie Adams, The Coachouse, 57 Crossgate, Cupar, Fife, KY15 5AS (“the Applicant”)

Mr Steven Wright and Mrs Jacqueline Ann Wright, 57A Crossgate, Cupar, Fife, KY15 5AS (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 57A Crossgate, Cupar, Fife, KY15 5AS under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant based his application on Ground 1A (Landlord intends to sell the Property to alleviate

financial hardship) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement with a start date of 1 March 2023, a Notice to Leave and email dated 8 August 2023, an email from Thorntons dated 14 November 2023, a bank statements, a rent statement to December 2023 and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Fife Council dated 8 December 2023.
3. On 13 February 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 26 March 2024. The Respondents required to lodge written submissions by 5 March 2024. This paperwork was served on the Respondents by William Wywalec, Sheriff Officer, Kirkcaldy on 14 February 2024 and the Executions of Service were received by the Tribunal administration.
4. On 18 March 2024 the Applicant’s solicitor forwarded further documents including text messages between the Applicant and the Respondents and an email dated 18 March 2024 from Darren Kane, Accountant from Figure Four Accounting Ltd.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 26 March 2024 by way of teleconference. Mr Hann, from Hann and Co appeared for the Applicant. Mr Adams was also in attendance. Mr Wright also appeared on his own behalf and on behalf of his wife Jacqueline Wright. The case was heard with an arrears action under reference FTS/HPC/CV/23/4425.
6. The Tribunal had before it the Private Residential Tenancy Agreement with a start date of 1 March 2023, the Notice to Leave and email dated 8 August 2023, email from Thorntons dated 14 November 2023, the bank statements, a rent statement to December 2023, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Fife Council dated 8 December 2023, texts between the parties and email from Darren Kane, Accountant from Figure Four Accounting Ltd. The Respondents had also lodged a letter dated 4 February 2024 addressed to the Applicant from Brian Smith, Technical Officer (Private Housing Standards) from Fife Council. The Tribunal noted the terms of these documents.
7. Mr Hann moved the Tribunal to grant an Order for repossession. He submitted the Applicant was under severe financial hardship. The Respondents had not paid rent for 6 months. The Respondent owned his house and two other properties including the Property. The other property was not occupied. He referred the Tribunal to the bank statements lodged from the

Bank of Scotland and submitted these were the Applicant's father's bank statements and that they showed money had been lent by the Applicant's father to the Applicant to help him cope financially. He also referred to the texts lodged between parties by way of background which he submitted showed that the Applicant could not afford to pay his mortgages. On being questioned by the Tribunal noting the texts pre dated the tenancy agreement, The Applicant explained that the tenancy was originally in the Respondents' son's name. He had then moved to the Applicant's other property. The Respondents then took up the tenancy. Mr Hann explained that the Applicant was in financial difficulties and had explored with an estate agent the possibility of selling the two rental properties. The Tribunal noted the terms of the email from Thorntons dated 14 November 2023. Property prices are strong and it appears that the only option for the Applicant to get him out of difficulty is to sell. The Applicant explained his monthly mortgage is £357. Mr Hann also referred to the email from the Applicant's accountant Darren Kane and pointed out that Mr Kane was of the opinion the Applicant's financial position was dire. He submitted the Applicant also had child maintenance to pay and had found himself in some difficulties with Council Tax. On being questioned by the Tribunal Mr Hann submitted that even if the arrears were cleared and up to date, the Applicant would still need to sell the Property to clear his feet.

8. In response Mr Wright submitted that due to the state of the Property the Respondents were not opposing the application to evict. They had been actively seeking alternative accommodation since August. They were on the housing list with the local authority but without an eviction order they could not get the points to get rehoused. He explained that his eldest son was profoundly deaf. He lived with them. He was unemployed. Mr Wright went on to explain he had spoken to Frontline Fife and the Citizens Advice Bureau. He explained Fife Council were fully aware of their son's disability. They would probably be rehoused in scatter flats. The whole situation was affecting his health and explained that the Applicant had taken the roof tiles off and replaced them with tarpaulin over the roof. However, the Property was in a poor state and because of that the application was not opposed.

Findings in Fact

9. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement dated 1 March 2023.
10. The Applicant owns the Property and a neighbouring property as well as his own home. The Applicant has required to borrow money from his father to assist him financially. The Respondents have not paid rent for six months. The Applicant's accountant has confirmed the Applicant is in financial difficulties. The Applicant is in financial difficulty.
11. The Applicant intends to put the Property and his other rental property up for sale to alleviate his financial difficulties. The email correspondence from

SolicitorThorntons dated 14 November 2023 indicates they would be willing to deal with the sale and marketing of the Property. The sale of the properties will assist the Applicant in getting out of his financial difficulties.

12. The Applicant served a Notice to Leave on the Respondents by way of an email on 8 August 2023. The Notice to Leave required the Respondents to leave the Property by 8 September 2023. The Notice to Leave relied on Ground 1(Landlord intends to sell) and Ground 1 A (Landlord intends to sell to alleviate financial hardship) of Schedule 3 to the 2016 Act.
13. The Respondents has sought help and assistance from Frontline Fife in seeking rehousing. They are on the waiting list for Fife Council.
14. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Fife Council on 8 December 2023.
15. The Respondents remain in the Property and live with their adult son who is profoundly deaf.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support.
17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1A, namely the Landlord intends to sell the Property to alleviate financial difficulty. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Grounds 1 and 1A of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 8 September 2023. The Notice to Leave was served on the

Respondents by email on 8 August 2023. In terms of Section 54 the notice period of the Notice to Leave is 28 days, the tenancy agreement having been in existence for less than six months. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 8 September 2023. In the circumstances the Tribunal is satisfied the Respondents has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

20. The Tribunal considered the submissions made by Mr Hann and the information provided by Mr Adams. The Tribunal also considered the submissions made by Mr Wright. The Tribunal considered the Respondents had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Hann, that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as they regained possession to alleviate the financial hardship he was under. The Tribunal accepted the submissions from Mr Hann that the Applicant was in financial hardship which was confirmed by the Applicant's accountant.

21. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when he obtained possession of it to help alleviate his financial difficulties. The Tribunal was satisfied that the Respondents had sensibly sought advice on their housing options. It was clear to the Tribunal that the relationship between the parties had broken down and that the Respondents had concerns about the state of repair of the Property. Although the Respondents had an adult disabled son, Fife Council were fully aware of his disability. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

22. In the circumstances the Tribunal considered that in terms of Ground 1A of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

23. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

26 March 2024

Legal Chair

Date