



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/23/4298

Re: Property at 35 St Valery Place, Ullapool, IV26 2TD (“the Property”)

Parties:

Mr Mark Gough, 24 Market Street, Ullapool, IV26 2XE (“the Applicant”)

Ms Toni Mackenzie, 35 St Valery Place, Ullapool, IV26 2TD (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 35 St Valery Place, Ullapool, IV26 2TD 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 Respondent. The order will include a power to Officers of Court to eject the Respondent 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 Grounds 1 (Landlord intends to sell the Property) and 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 November 2022, a Notice to Leave dated 15 July 2023, emails between the parties dated 12 -15 July 2023, a letter dated 31 August 2023 from Messrs Clancys, solicitors and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Highland Council dated 30 November 2023.
3. On 4 March 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 11 April 2024. The Respondent required to lodge written submissions by 25 March 2024. This paperwork was served on the Respondent by Robert White, Sheriff Officer, Inverness on 6 March 2024 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 11 April 2024 by way of teleconference. Ms Leslie, from Ledingham Chalmers, solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow her plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
5. The Tribunal had before it the Private Residential Tenancy Agreement with a start date of 1 November 2022, a Notice to Leave dated 15 July 2023, emails between the parties dated 12 -15 July 2023, a letter dated 31 August 2023 from Messrs Clancys, solicitors and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Highland Council dated 30 November 2023. The Tribunal noted the terms of these documents.
6. Ms Leslie moved the Tribunal to grant an Order for repossession. She submitted the Applicant's position was as set out in the application. He was under severe financial hardship. The current mortgage over the Property was £1300 per month. Rent was £500 per month. Accordingly, the Applicant was having to make up £800 per month shortfall. She referred to the offer to purchase the Property for £155 000 lodged from Clancys solicitors and submitted that the offer to purchase was still valid and that the proposed purchasers lived in Ullapool in social housing, and they were just waiting for a date of entry. In the meantime, the Applicant was having to make up the shortfall of £800 per month. She submitted the Applicant was 62 years of age and was looking to retire and reduce his outgoings. His wife was 65 years of age and their retirement plan had always been to sell the Property to help fund their retirement. He owns no other properties.
7. Ms Leslie understood that the Respondent was looking for social housing. The Tribunal noted the Respondent's email of 13 July 2023 in which she had

applied for social housing but needed an order from the Tribunal. Ms Leslie submitted she understood that when her client last visited the Property in February 2024, the Respondent had packed up and was simply waiting to move after the order had been granted. The Applicant believed the Respondent worked and lived in the Property with her 10-year-old daughter.

Findings in Fact

8. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 1 November 2022.
9. The Applicant's monthly mortgage on the Property is £1300 per month. The rent is £500 per month. The shortfall between the mortgage and rent is £800 per month.
10. The Applicant received an offer to purchase the Property for £155 000 on 31 August 2023. The purchasers' offer is still open to acceptance. The Applicant and the purchasers will agree a date of entry when the Property is vacated. The Applicant intends to sell the Property to assist in his retirement planning.
11. The Applicant served a Notice to Leave on the Respondent by way of an email on 15 July 2023. The Notice to Leave required the Respondent to leave the Property by 14 October 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.
12. The Respondent is seeking help and assistance from Highland Council in seeking rehousing.
13. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Highland Council on 30 November 2023.
14. The Respondent lives in the Property with her daughter. The Respondent is in employment.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support.
16. 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 Grounds 1 and 1A, namely the Landlord intends to sell the Property and that he intends to sell to alleviate financial difficulty. These are discretionary grounds of eviction. As well as being

satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.

17. 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.
18. 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 14 October 2023. The Notice to Leave was served on the Respondent by email on 15 July 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 14 October 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
19. The Tribunal considered the submissions made by Ms Leslie. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Leslie, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as he regained possession to the prospective purchasers to fund his retirement. Although the Tribunal accepted Ms Leslie's submissions that there was a shortfall of £800 every month between the mortgage and the rent there was nothing before the Tribunal to show this was causing financial hardship. Although there was a shortfall there was no other evidence before the Tribunal that would satisfy the Tribunal that that was placing him in financial hardship. The Tribunal therefore was not satisfied that Ground 1A was satisfied.
20. 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 fund his retirement. It was clear to the Tribunal that the relationship between the parties was good, and that the Respondent had accepted she would have to move. The Tribunal considered that although the Respondent had a daughter, the Respondent had sensibly sought advice on her housing options and had applied social housing. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

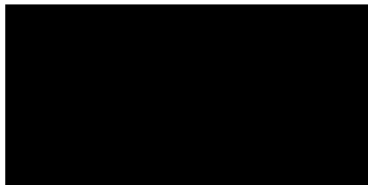
21. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

22. 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.



11 April 2024

Legal Chair

Date