

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 (1) and 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”)

Chamber Ref: FTS/HPC/EV/23/2366 and FTS/HPC/CV/23/2367

Re: Property at 1 Greenfield Circle, Elgin, IV30 5NF (“the Property”)

Parties:

Mrs Dawn Laing, 2 Abbotsford Gardens, Pluscarden Road, Elgin, IV30 1UF (“the Applicant”)

Ms Casey Munday, 1 Greenfield Circle, Elgin, IV30 5NF (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ann Moore (Ordinary Member)

Decision

[1] In respect of the Application with reference, FTS/HPC/EV/23/2366, The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made an Eviction Order, with provision that this may not be enforced for a period of four months from today’s date. In respect of the Application with reference FTS/HPC/CV/23/2367, the Tribunal granted the Application and made a Payment Order in the sum of £960.00.

Background

[2] The Applicant seeks an Eviction Order under Ground 1A of Schedule 3 of the Act. The Application is accompanied by a copy of the relevant tenancy agreement; the relevant notice to leave with proof of service; evidence of the reasons as to why the Applicant wishes to sell the Property and the relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003. The Applicant also seeks a Payment Order for

rent arrears said to have been accrued by the Respondent under the tenancy between the parties. The Application was opposed by the Respondent.

Procedural History

[3] The Applications had called for a Case Management Discussion (CMD) by conference call on 16 January 2024. Directions had been made regarding the production of further evidence and the Applications were continued to a conjoined Hearing for evidence to be heard.

Hearing

[4] The Applications then called for a Hearing by conference call at 10 am on 2 May 2024. The Applicant was present along with her representative, Mr Charlie Beck. The Respondent was present along with her representative, Ms Sonya Hayward. The Applicant and the Respondent both gave evidence. The Tribunal asked questions throughout to ensure it understood each party's respective position. Each party had the opportunity to cross examine the other. After the conclusion of evidence, each party had the opportunity to make closing submissions. It was noteworthy that at the outset of the Tribunal, it was accepted by the Respondent that the sums claimed as rent arrears were indeed lawfully due in the sum of £960.00. The Tribunal comments on the evidence heard as follows.

The Applicant- Mrs Dawn Laing

[5] Mrs Laing is a self-employed bookkeeper with her own adult children. She lives with her husband. She explained that they keep their finances entirely separate. In addition to the house in which she lives, the Applicant owns the Property and one other property which she inherited and which is let out. That property is mortgage free. The Applicant intends to sell this other property at some point, but as there is no mortgage on the Property, the Applicant does not consider that she is required to sell that property to alleviate financial hardship.

[6] The Applicant's evidence was straightforward to understand. She is not financially struggling but is losing money each month in operating as a landlord in respect of the Property which is the subject of these proceedings. She explained that the rent is £1,000.00 but the mortgage is currently £645.00, there is a letting agent fee of £96.00, landlord insurance of £47.00 per month and other professional fees of £30.00 per month. The Applicant also explained that she also paid an equivalent of £339.00 a month as tax meaning that she calculated that she suffered a financial loss of £157.00 each month. The Applicant contended that she therefore wished to sell the Property to alleviate financial hardship. The Applicant had supplied further information about her broader finances. The Tribunal acknowledges that this would have been uncomfortable for the Applicant

and somewhat intrusive. The Tribunal was however satisfied that it understood the Applicant's financial situation. The Tribunal also accepted that the Applicant and her husband were perfectly entitled to keep their finances separate. The Tribunal considered that it would have been unacceptably intrusive if the Applicant not only had to disclose her own financial position, but also that of her husband who she said had no connection to the Property or involvement in the Applicant's finances.

[7] Although, the Applicant came across as somewhat frustrated by the process, she came across as credible and reliable to the Tribunal.

The Respondent- Ms Casey Munday

[8] Ms Munday is clearly a vulnerable lady in that she has recently finished chemotherapy for cancer. She suffers from depression. She receives Adult Disability Payment at the enhanced rate for both the Daily Living Activities Component and the Mobility Component. The Respondent explained that she is actively looking for another home. She is being assisted by the relevant local authority. She is however anxious to avoid being placed in temporary accommodation. The Applicant has made efforts to source alternate accommodation in the private sector. That is made more complicated by the fact that she requires an extra room for a carer and downstairs washing facilities. The Respondent is also very concerned about being separated from her two beloved Shih Tzus: Barney and Rubble. The Respondent explained that they are her companions and a source of constant joy and purpose. She finds comfort, support and routine in caring and providing for her dogs. If the Respondent had to be moved into temporary accommodation, she would be separated from her dogs. The Respondent considers that an unthinkable proposition. The Tribunal found the Respondent to be credible and reliable. She was naturally well established in the Property which was described as a large, beautiful detached house in a desirable area of Elgin. It had room for her dogs. The Respondent was open to moving to another Property but was clearly anxious about the prospect of being separated from Barney and Rubble.

[9] Having heard from parties, the Tribunal made the following findings in fact:

Findings in Fact

- I. *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act;*
- II. *The Applicant competently served a notice to leave on the Respondent under ground 1A of Schedule 3 of the Act. The Applicant wishes to sell the Property to alleviate financial hardship because she considers that it is no longer profitable for*

her. Taking account of the tax paid on the rental income, the Applicant considers it to be loss making;

- III. *The Applicant has served the requisite notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003;*
- IV. *The Respondent is accepting of the need to find alternate accommodation, but is most anxious at the thought of being separated from her beloved dogs which may very well be a requirement of being placed in temporary accommodation. The Respondent is a vulnerable lady who has a diagnosis of terminal cancer and depression.*
- V. *The ground set out in the notice to leave is established in that the Applicant wishes to sell the Property to alleviate financial hardship.*
- VI. *The Respondent is in arrears of rent in the sum of £960.00 to the Applicant.*

Reasons for Decision

[10] Having made the above findings in fact, the Tribunal found that the ground relied upon was established. The Tribunal did not take the view that the only way ground 1A could be engaged would be if the Applicant was facing poverty or “*severe financial hardship*”. The Applicant was entitled to consider that she was making a loss on the Property. This was not an unreasonable assessment. As such the Applicant was entitled to consider that she wished to alleviate that financial hardship by selling the Property. The Tribunal also did not accept the Respondent’s criticism that the Applicant’s husband’s income ought to be taken into account. He was not the landlord. The Applicant was entitled to keep her finances separate. The Tribunal was not required to conduct a forensic exercise in pouring over the Applicant’s private household finances. That in any event would have been demeaning to the Applicant and an unnecessary intrusion into her privacy. The Applicant had provided more than enough information about her finances in respect of the Property for the Tribunal to make an assessment of matters.

[11] The Tribunal considered whether it was reasonable to make an Eviction Order. The Tribunal noted the issues advanced by the Respondent were that it would not be reasonable because of the Respondent’s health issues and her attachment to her dogs. The Tribunal considered these carefully. The Tribunal however could not conclude that these made it unreasonable to make an Eviction Order. The fact that the Respondent herself was looking for another Property and accepted that she required to leave the Property was key. The Respondent had candidly said that it was time that she needed. The Tribunal considered that it was possible to grant the Application and make an order in such a manner that would address in part the Respondent’s concerns. Those concerns

were more to do with timescales for implementation of the order rather an absolute defence to the order being granted at all. The Tribunal considered that the Respondent's concerns regarding being separated from her dogs required to be respected for and ought to be accounted for as far as possible within the broader decision of the Tribunal. The Tribunal concluded, that whilst it was reasonable to make an Eviction Order, it was also reasonable to allow the Respondent more time to find alternate accommodation and therefore a much better chance of avoiding the need for temporary accommodation. The Tribunal will therefore order that the Eviction order made may not be enforced for a period of four months.

[12] On the basis that there was no defence to the Application for a Payment Order put forward, the Tribunal made a Payment Order as sought in favour of the Applicant, against the Respondent in the sum of £960.00.

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.

A McLaughlin

2 May 2024

Legal Member