



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/0279

Re: 182 Clement Rise, Livingston, EH54 6LP ('the Property')

Parties:

Louise Jacobs residing at 64 Orchard Road, Edinburgh, EH4 2HD ('the Applicant')

John Jacobs ('The Applicant's Representatives')

Paula Jamieson residing at 182 Clement Rise, Livingston, EH54 6LP ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) Angus Lamont (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 17th January 2024. The application states that the ground for eviction was as follows:

'Ground 1: The Landlord intends to sell the Let Property. The mortgage on the property needs to be paid off and as the landlady does not intend to remortgage the property and she wants to gain vacant possession of the property so the property can be sold.'

1.3 Documents lodged with the Tribunal were:-

- The undated Private Residential Tenancy Agreement. The commencement date of the tenancy was 3rd August 2020.
- Notice to Leave dated 24th August 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 17th November 2023.
- A letter signed by the Respondent confirming that she received the Notice to Leave on 24th August 2023.
- Email to West Lothian Council attaching the Section 11 Notice.
- Section 11 Notice addressed to West Lothian Council.
- An undated letter from Lothian Homes confirming that they have been instructed to sell the Property once the Property is vacant.
- A letter from NatWest to the Applicant dated 26th October 2023 advising of changes to the mortgage account. With effect from 24th November 2023 the monthly payments are £590.02 and the mortgage will expire on 17th December 2024.

2. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 19th February 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 18th January 2024 and 2nd February 2024) to a Tribunal.

3. The Respondent did not provide any written representations.

4. Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 4th June 2024.

The Applicant's representative and the Respondent attended the CMD.

4.1 Oral Representations by the parties:

4.1.1 Mr Jacobs advised that the mortgage over the Property comes to an end on 17th December 2024 and his wife needs to sell the Property before that date. Paula has been a tenant of the Property since 2015 and she has been a good tenant except for a few occasions when benefits were not paid. They started the eviction process first in October 2020 but covid came along. His wife is now at the point where she needs to sell the Property.

4.1.2 Miss Jamieson agreed with Mr Jacob's submissions. She has applied to the Local Authority for rehousing but they will not progress her application until the eviction order is granted. She lives alone and the Property has not been adapted. She would not object to being given 30 days notice to vacate the Property if an eviction order made this provision.

5. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The selling agreement with Lothian Homes was sufficient in its terms.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 24th August 2023 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 17th November 2023.

The Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Respondent has acknowledged receipt of the Notice to Leave on 24th August 2023. The Notice to Leave correctly gave the Tenant a minimum of eighty four days notice.

- (iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

6. Decision

6.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1.1 The Tribunal had a copy of the Landlord's title MID76602 and established that the Applicant is heritable proprietor of the Property and she is entitled to sell the Property.

6.1.2 Evidence had been provided that the Applicant intend to sell the Property. The Tribunal accepted the following evidence:

6.1.2.2 The letter from Lothian Homes confirming that they have been instructed to sell the Property when vacant possession has been secured.

6.1.2.3 The letter from Nat West dated 26th October 2023 confirming that the mortgage will expire on 17th December 2024.

6.1. 3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once she obtains vacant possession.

6.2 The Tribunal were mindful of the decision of Lord Greene in the case of Cummings v Dawson (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the mortgage payments exceed the rental income and the Applicant consequently needs to sell the Property to enable her to redeem the outstanding mortgage and the fact the Respondent has applied for alternative housing and her application will be progressed once the eviction order is issued.

6.3 The Tribunal granted the eviction.

7. 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.

J.Taylor

Legal Member

5th June 2024