



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/23/4376

Re: Property at 2/3, 620 Cumbernauld Road, Glasgow, G33 2ES (“the Property”)

Parties:

Mr Richard Yates, 45 Bowness Avenue, Oxford, OX3 0AL (“the Applicant”)

Mr Cafer Seyfi, Mrs Nurcan Seyfi, 2/3, 620 Cumbernauld Road, Glasgow, G33 2ES (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

1. On 5th December 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 11th November 2019 and a rent of £550 per month;
 - ii. Copy Notice to Leave dated 5th September 2023;
 - iii. Email to the Respondents dated 5th September 2023 attaching Notice to Leave;
 - iv. Section 11 Notice and proof of service;
3. The Application was served on the Respondent by Sheriff Officers on 21st March 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The Respondents represented themselves, they did not join the call until 2.20pm.
5. The Chairperson explained the purposes of a CMD to the Applicant, and again to the Respondents when they joined the call, in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. The Applicant sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He confirmed that he intended to market the property for sale within three months of the Respondents vacating. He said that he had already instructed an estate agent and a solicitor but could not do anything further until he had vacant possession.
7. As far as reasonableness was concerned he said that from his own point of view it was no longer viable to keep the property as a rental property. It was now worth less than it was when he bought it. The mortgage payments had risen several times in the last eighteen months and the monthly mortgage payment was not much less than the net rent after deduction of agent’s fees. He was precluded from raising the rent in line with current market rent due to the changes in legislation. He said that he had one other rental property in Scotland but he was able to get market rent for it as he had reasonably new tenants in it.
8. The Respondents joined the call at this point and the Chairperson recapped on everything that had been said for them to be fully aware. The Second Named Respondent spoke on their behalf. She said that they lived in the property with their three year old son. They had approached two local authorities regarding rehousing when they received the Notice to Leave. They had been told that they would be given priority when they became homeless.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 11th November 2019;
- c. A Notice To Leave, dated 5th September 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;

- e. The Application was served on the Respondent by Sheriff Officer on 21st March 2024;
- f. The Applicant has a mortgage on the property;
- g. The monthly mortgage payment has risen significantly in the last few months;
- h. The net monthly rent now only slightly exceeds the mortgage payment;
- i. The Applicant intends to market the property for sale within three months of the Respondents leaving;
- j. The Respondents live in the property with their three year old son;
- k. The Respondents have approached two local authorities regarding re-housing.

Reasons for Decision

9. It was mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " and

"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

10. The Tribunal were of the view in this case that the Applicant had established Ground 1 by confirming that he intended to market the property for sale within three months of the Respondents vacating. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s reasons for wishing to sell, and also accepted that the Respondents were finding it difficult to obtain alternative housing. On balance the Tribunal considered that consideration of reasonableness weighed in favour of granting the order. The Applicant is renting his property as a commercial venture, and if it is not viable financially it is not reasonable to expect him to continue to do so. The Respondents have been told by the local authority that they will be given priority if they are evicted.

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 Kelly

Legal Member/Chair

29th April 2024

Date