



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/24/1408

Re: Property at 1B Garry Place, Perth, PH2 0AA (“the Property”)

Parties:

Mrs Camilla McIntosh (nee Heaton-Armstrong), Old Mill View, Balgowan, Perth, PH1 1QW (“the Applicant”)

Mrs Geraldine Rainsbury, 1B Garry Place, Perth, PH2 0AA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it could decide the application without a Hearing and that it was reasonable to issue an Eviction Order against the Respondent

Background

1. By application dated 22 March 2024, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.
2. The application was accompanied by copies of a Notice to Leave dated 7 October 2023 advising the Respondent that an application to the Tribunal under Ground 1 would not be made before 22 March 2024 a statement from a mortgage lender confirming that the interest rate on the Applicant’s mortgage would increase from 2.24% to 31 October 2023 to 6.34% from 1 November 2023, and a letter from an estate agent setting out their estimate of sale value of the Property and their terms of business. The Applicant also provided the Tribunal with a copy of the Private Residential Tenancy Agreement between the Parties, which commenced on 16 June 2020 at a rent of £520 per month.

3. On 12 June 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 3 July 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 18 July 2024. Both parties were present, and the Respondent was supported by her grand-daughter.
5. The Applicant told the Tribunal that she needs to sell the Property. It is one of three rental properties that she owns, but it is the one that had seen the greatest rise in mortgage payments and it produces the lowest rent. Her elderly parents are both unwell and she anticipates having to help fund care for them, as they rent and do not own their home. Her husband has also recently had an operation and now has ongoing health problems. She has only a very small pension in addition to the State Pension. She needs to be in a position to help her parents when the time comes. She confirmed that the Respondent has been an excellent tenant who always pays her rent on time.
6. The Respondent told the Tribunal that she understands that the Applicant requires to sell the Property, although it would be hard for her to leave. Her granddaughter, who has just left school lives with her, and due to health conditions, they both require ground floor accommodation. The Respondent has been in contact with the local authority and has been told that they will consider helping her to find alternative accommodation only if an Eviction Order is granted against her. In response to a question the respondent confirmed that she has advised the local authority of their health conditions which require them to have ground floor accommodation.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
8. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

9. The Tribunal was satisfied from the evidence provided by the letting agents that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
10. The Tribunal noted in particular the substantial increase in the current mortgage payments which the Applicant had to meet and the fact that she anticipated having to provide financial assistance to her parents, which she could not do from savings or from other income. The Tribunal also took into account the fact that the Respondent did not oppose the application and was empathetic with the Applicant's situation and had taken steps to try to find alternative accommodation.
11. Having considered carefully all the evidence before it, the Tribunal decided on balance that it would be reasonable to issue an Eviction Order.

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.

G Clark

Legal Member/Chair:

Date: 18 July 2024