



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/24/1559

Re: Property at 94 Strathleven Drive, Bonhill, G83 9PQ (“the Property”)

Parties:

Mr George Thomas, Calle de Murcia 210, urb New Sierra Golf, Balsicas, Murcia, Spain (“the Applicant”) per his representative SB Property, 120, Glasgow Road, Dumbarton, G82 1RG (“the Applicant’s Representative”)

Miss Emma Cairns, 94 Strathleven Drive, Bonhill, G83 9PQ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision.

The Tribunal, having found the Ground for eviction had been met and being satisfied that it is reasonable to grant the Order, grants the Application and makes an Order for eviction.

Background

1. By application received between 5 April 2024 and 7 May 2024 (“the Application”), the Applicant’s Representative applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act, the landlord intends to sell the let property.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties commencing on 1 June 2023;
- ii) copy Notice to Leave in terms of Ground 1 of Schedule 3 to the 2016 Act dated 8 January 2024;
- iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to West Dunbartonshire Council being the relevant local authority;
- iv) confirmation from the Applicant's Representative that they are instructed to sell the Property.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 5 August 2024 at 11.30 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 1 July 2024.

CMD

4. The CMD took place on 5 August 2024 at 11.30 by telephone. The Applicant did not take part and was represented by Mr. S. Barriskell of the Applicant's Representative. The Respondent took part and was not represented.
5. Mr. Barriskell confirmed that the Applicant sought an eviction Order. He explained that the Applicant and his wife had settled in Spain some ten or eleven years ago and had decided to remain resident there. Mr. Barriskell stated that the Applicant's home in Spain was small and that the Applicant and his wife wished to sell the Property to buy a larger and more suitable home in Spain. He confirmed that the Applicant and his wife do not have any other properties and, as they are in their late sixties or early seventies, they wish to retire fully to Spain.
6. Miss Cairns stated that she did not oppose the Application but had not been able to secure alternative accommodation. She stated that she had applied to the local authority and to local housing associations and was on their list for rehousing. She explained that, if an Order is granted, her application will be accelerated. Miss Cairns advised that she has five children aged eighteen, fifteen, twelve, ten and five years. Her eldest son attends college, her fifteen year-old son attends Vale Academy, her twelve year-old daughter will attend Vale Academy later this month and her younger children attend the local primary school. She explained that none of her children have medical issues but she has a disability and has been receiving support from her doctors' surgery. Miss Cairns stated that she requires a three bedroom house and this requirement could cause the local authority a supply issue.

7. Both Mr. Barriskell and Miss Cairns confirmed that, although the private residential tenancy agreement began on 1 June 2023, Miss Cairns had resided in the Property for around nine years.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties;
 - ii) The Applicant and his wife have resided in Spain for around ten years and intend to continue to reside there;
 - iii) The Applicant and his wife are of retirement age;
 - iv) The Applicant intends to sell the Property to purchase a larger home in Spain;
 - v) The Applicant and his wife do not have other properties which they could sell;
 - vi) The Respondent does not oppose the Application;
 - vii) The Respondent resides at the Property with her five children, four of whom attend local schools;
 - viii) The Respondent remains in the Property as she has been unable to secure alternative accommodation;
 - ix) The Respondent has applied to the local authority for housing;
 - x) The local authority have advised the Respondent that, if an Order is granted, her housing application will be accelerated.

Issue for the Tribunal

9. The issue for the Tribunal was to determine whether or not to grant the Order sought.
10. The Ground on which the Application proceeds is Ground 1 which is that the landlord intends to sell the Property. The Tribunal is satisfied that the landlord intends to sell the Property. Ground 1 also states the Tribunal must be satisfied that it is reasonable to issue an eviction order.
11. The statutory ground being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

12. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
13. The Tribunal then looked to balance the rights and interests of both parties.
14. The Tribunal accepted that the Applicant and his wife are retired and now reside permanently in Spain. The Tribunal accepted that they wish to purchase a larger home in Spain and require funding from the sale of the Property to do so.
15. With regard to the Respondent’s position in respect of not being able to secure suitable accommodation. The Tribunal noted that the Respondent accepts that she and her family cannot remain in the Property and noted that she is actively seeking alternative accommodation with the local authority. The Tribunal had regard to the fact that, if evicted and made homeless, the Respondent and her family would be entitled to make an application to the local authority for assistance in terms of Part II of the Housing (Scotland) Act 1987 and so would be likely to be eligible to access accommodation suitable for their needs.
16. On balance, the Tribunal took the view that not granting the Order would have a significantly greater detrimental impact on the Applicant in respect of his and his wife’s retirement and residence abroad than it would on the Respondent and her family who have a route to obtain alternative housing. Accordingly, the Tribunal is satisfied that it is reasonable to grant the Order and so grants the Application.
17. The Tribunal had regard to the fact that the Respondent and her family require a three bedroom house and that there is a lack of supply of this type accommodation in the public sector. Therefore, the Tribunal stayed the Order coming into effect until 31 October 2024 to allow the Respondent sufficient time to secure alternative accommodation.
18. This decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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.

Karen Moore

Legal Member

5 August 2024

Date