



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ref: FTS/HPC/EV/24/2280

Re: Property at Flat 1/2 (Flat 1/R), 95 Causewayside Street, Paisley, PA1 1TU (“the Property”)

Parties:

Ms Mavis Makurumure, 15 Bowfield Way, Howwood, Johnston, PA9 1BF (“the Applicant”)

T C Young Solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicant’s Representative”)

Mr Craig McGoldrick, Flat 1/2 (Flat 1/R), 95 Causewayside Street, Paisley, PA1 1TU (“the Respondent”)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Ms. Ann Moore (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 5 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, the family member is a qualifying relative, namely a child of the landlord; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act; and deferred the date of execution of the order to 30 September 2024.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants' Representative made an application to the tribunal on 17 May 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicants' Representative provided the following documents in support of the Application:
 - 2.1. Paper apart to the application;
 - 2.2. Sworn affidavit from the Vimbainashe Tariro Murevesi, the Applicant's daughter dated 14 May 2024;
 - 2.3. Copy Notice to Leave dated 24 January 2024;
 - 2.4. Proof of service of Notice to leave dated 24 January 2024;
 - 2.5. Copy Homelessness Notice to the local authority;
 - 2.6. Proof of receipt of Homelessness Notice; and
 - 2.7. Copy private residential tenancy agreement dated 1 February 2021.
3. The tribunal's administration obtained a copy of the Title deeds for the Property which show that the Applicant is the registered proprietor.
4. On 3 June 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application on 1 August 2024 by teleconference at 1000h. The Application paperwork was personally served on the Respondent by Sheriff Officers. The Respondents were told that if they wished to submit written representations these should be sent to the tribunal by 16 July 2024.
5. Prior to the CMD, the Applicant's Representative submitted an updated rental statement.

CMD: 1 August 2024, 1400h, Teleconference

6. Ms Nichola Brechney, solicitor from the Applicants' Representative, attended.
7. Mr McGoldrick, the Respondent attended.

8. I explained the nature and purpose of the CMD.

Preliminary matter – Respondent’s late documents

9. Mr McGoldrick asked to submit some late documents relating to the alleged rent arrears. He explained that payments of Universal credit were being made by the local authority in Paisley to the agent of the former landlord. The Respondent has gone into the local authority to try to resolve matters. He has gone most recently three days ago and spoke to an employee named Stuart. The purpose of the visit was to confirm that rent was not being paid to the current landlord. The local authority confirmed that it is being paid to Be Rented. The Respondent asked for evidence. The local authority provided a printout of his account number from universal credit. The bank account and sort code specified is the account that they have been putting the money into. He said that he became aware when Mavis (the Applicant) told him on 1 July 2023 that she had bought the Property. She came to the door. She said that the previous landlord had not told her that there was a tenant in the Property. The Respondent contacted Universal Credit. They said that he needed a new house lease from the new landlord. Mavis (the Applicant) took a while to issue a lease. The Respondent made an appointment with Universal Credit. He went to the job centre to change the details of his claim. He does not know what has happened with his claim.

10. Mr McGoldrick said he then contacted Be Rented by email. He said that this has been a long situation which has never been resolved. He has emailed and received a reply from Be Rented. Be Rented said that they terminated their services to the former landlord on 25 January 2023. They said in their reply that they have spoken to and texted the landlord and no action has been taken by them. They asked the Respondent for a payment in order for them to investigate whether they were still receiving payments in error.

11. There are three late documents. The first is payment instruction details from Universal Credit to the Application; the next is a printout summary of Universal credit payments and the third is email correspondence with Be Rented.

12. The documents were sent to the tribunal and the other party. There was no opposition to the late documents being received.

13. The tribunal allowed the Respondent’s late documents to be received.

Respondent's submissions

14. The Respondent does not really want to move from the Property but he understands that the eviction order will probably be granted. He asked for additional time to find another property and get organised. He said that he has been forced to move. He has been there for 13 years and has had a few landlords before the Applicant. His kids have grown up there and his late partner passed away there. He lives in the Property on his own. He is on sick leave just now. He has been in turmoil for the last couple of years. He has been trying to work with Mrs Mavis (the Applicant). He knows that she wants into the flat. He has spoken to the local authority housing team but was not put down as homeless because he still has a flat. He has also spoken to a housing association to get advice about the eviction and a new house if he is evicted. He said that 30 days for eviction would be a problem for him. The local authority housing team said that they would put him on the homeless list. If the tribunal makes an order today he will tell the local authority. He does not want to be evicted but he thinks he is going to get evicted anyway. He would like additional time to organise himself and know where he is going. He would find it difficult to move in 30 days.

Applicant's representative's submissions

15. Ms Brechnie has no instructions on a deferral of execution. She offered to summarise the background to this action. There has been no payment of rent since June 2023. She understands that the former management company were dealing with the Respondent until around June 2023 and that they then stopped assisting. Since that date there has been no payment towards the rent. She accepted that that needs to be investigated further. She said that she will need to speak to the Applicant. She said that any suspension of the order will be detrimental to the Applicant who is struggling financially. The eviction order is under Ground 5. It is for the Applicant's daughter to reside there. The Applicant did not know that the Respondent was in the property upon purchasing it, through no fault of the Applicant or Respondent.

16. Ms Brechnie said that the Applicant was not aware that the rent was going to a different recipient. She thought that the Respondent should be making payment to her directly. The relationship between the Applicant and Respondent seems to have broken down. The Applicant's Representative was approached by a rep of U First advocacy back in April 2024. The Applicant's Representative brought up the issue of rent arrears. The Applicant has advised that on many occasions she has brought up the issue of rent to the Respondent. She is simply seeking payment of the rent but has raised the Application on a different ground. The Applicant's husband passed away in May last year and she has had to recover. The Applicant's daughter is due to commence University in September, as contained in the affidavit

lodged. She would like to be able to move in before the start date. She has not given the exact start date of her course. Ms Brechnie cannot confirm where her partner currently is. Due to cultural reasons the partner cannot live in the Applicant's family home with her. Regardless it will be the Applicant's daughter's property. The Applicant's daughter is also having to help her mother meet the payments every month.

17. In relation to the related civil application (ref 2282), Ms Brechnie said that she needs to investigate the issue with Be Rented and take instructions. It may be that that matter can be resolved. The Applicant has advised that she issued letters to the Property and went to the Property to discuss the arrears. In February 2023 the Applicant contacted her solicitor with a tenancy reference from Renfrewshire Council. She asked if she should complete it. They advised that she should give honest and accurate details to Renfrewshire Council. She would have to disclose rent arrears and the respondent's failure to engage. Ms Brechnie is not sure if she provided the reference. She understands that the Respondent had taken steps to secure alternative accommodation in February this year.

Respondent's additional submissions

18. Mr McGoldrick confirmed that he did start a search for alternative accommodation in February this year. He said that Mavis (the Applicant) had come to his door in August 2023. An arrangement was made for an appointment for both of them to attend the local authority in September 2023. She then emailed to say that she was going to her husband's funeral in Africa. The Respondent went to the appointment with the DWP but she did not come to the appointment. The Respondent got all the details changed over that day with all the paperwork she had given him. He does not know what has happened with DWP either. He said that he had done what the Applicant asked him to do and that if she had come to the appointment it might have been different.

19. The tribunal adjourned to deliberate.

20. The tribunal makes the following findings-in-fact:

- 20.1. The Applicant is the registered proprietor of the Property.
- 20.2. The Applicant purchased the Property at an auction.

- 20.3. At the time the Applicant purchased the Property she was unaware that there was a tenant in the Property.
- 20.4. At the time the Applicant became registered proprietor of the Property on 3 October 2022, it was let to the Respondent by Concept Live Limited, via the agent Be Rented Limited, in terms of a Private Residential Tenancy agreement.
- 20.5. The Applicant thought that she was purchasing a vacant property at auction.
- 20.6. The Property was purchased for the purpose of the Applicant's adult daughter to live in with her partner during her University studies.
- 20.7. The Applicant became aware of the pre-existing tenancy when she collected the keys for the Property.
- 20.8. The Applicant's adult daughter intends to live in the Property as her only or principal home for at least three months.
- 20.9. On 24 January 2024, a Notice to Leave containing ground 5 of Schedule 3 to the 2016 Act was served on the Respondent.
- 20.10. The Applicant has given the Respondent at least 84 days' notice that they require possession.
- 20.11. The Application to the tribunal was made on 17 May 2024.
- 20.12. There have been issues with rental payments for the Property since in or about June 2023, which have been made by the local authority as Universal Credit payments to the agent of the former proprietor.
- 20.13. The Respondent has been in communication with the local authority about the Universal Credit payments but has been unable to resolve the matter.
- 20.14. Because of the problems with rental payments, the Respondent's rental account with the Applicant is in arrears.
- 20.15. The Applicant has a mortgage and other outgoings to meet in respect of the Property and the rent arrears are causing her some financial hardship.

- 20.16. The Respondent lives in the Property on his own.
- 20.17. The Respondent has made some attempts to find alternative accommodation but so far been unable to do so.
- 20.18. The Respondent intends to apply for local authority accommodation.

21. Findings in fact and law

- 21.1. At the time the Applicant became registered proprietor of the Property the Respondent was occupying under a Private Residential Tenancy Agreement with the former proprietor and the Applicant therefore has title and interest to make the Application.
- 21.2. A member of the landlord's family intends to occupy the Property as her only or principal home for at least 3 months and the family member is a qualifying relative, namely a child of the landlord.
- 21.3. The facts required in paragraph 5 of Schedule 3 to the 2016 Act have been established.
- 21.4. It is reasonable to make an order for eviction but considers that it is reasonable to defer the date of execution of the order to 30 September 2024, to allow the Respondent additional time to seek alternative accommodation.

Discussion

22. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.
23. In relation to reasonableness, reference is made to the tribunal's findings in fact.
24. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case but considered that it was also reasonable to defer execution to 30 September 2024 at 12 noon.

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.

Ms. Susanne L. M. Tanner K.C.

— 1 August 2024