



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/24/0742

Re: 31 Grange Road, Fort William, PH33 6JH (“the Property”)

Parties:

Mr Jonathan Law, 9A/3 Leslie Place, Edinburgh, EH4 1NF (“the Applicant”)

Macphee and partners, Airs House, An Aird, Fort William, PH33 6BL (“the Applicant’s Representative”)

Mr Gary Doherty and Mr Jamie Doherty, 31 Grange Road, Fort William, PH33 6JH (“the Respondent”)

Tribunal Members:

Ms. Susanne L. M. Tanner K.C. (Legal Member)

Mr. Ahsan Khan (Ordinary Member)

Decision

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

(1) was satisfied that Ground 1 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: the Applicant intends to sell the let Property for market value, or at least put it up for sale within three months of the Respondents ceasing to occupy it; 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.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants' Representative made an application to the tribunal on 13 February 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. Copy tenancy agreement;
 - 2.2. Sales Listing;
 - 2.3. Copy Notice to Leave given to the tenants;
 - 2.4. Email to tenants with the Notice to leave; and
 - 2.5. Copy section 11 Notice to the Local Authority with online service.
3. The tribunal's administration obtained a copy of the Title deeds for the Property which shows that the Applicant is the registered proprietor.
4. On 2 April 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 14 August 2024 by teleconference at 1400h. The Application paperwork was personally served on the Respondents by Sheriff Officers on 9 July 2024. The Respondents were told that if they wished to submit written representations these should be sent to the tribunal by 29 July 2024.
5. The Respondents did not submit any defence or any written representations to the tribunal and they did not make any contact with the tribunal after service of the Application paperwork and notification of the CMD.

CMD: 12 August 2024, 1400h, Teleconference

6. Ms McAlpine, solicitor from the Applicant's Representative attended. She was accompanied by a trainee solicitor who was observing. The Applicant attended.
7. The Respondents did not attend. They did not contact the tribunal to say that there was any difficulty with attending. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of

any party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

Submissions by and on behalf of the Applicant

8. Ms McAlpine submitted that everything required has been lodged. The Applicant, Mr Law, is the owner of the Property. He became a landlord because a family property was passed down to him. It was originally let through a Housing Association. When they no longer required it, he wanted to keep the Property. They have lodged the tenancy paperwork. The Notice to Leave was served on the tenants. There had been contact with the tenants in advance. They confirmed that they were content to vacate the property. The timing was discussed with the tenants. They accepted that the minimum notice period would be fine. The Applicant then went to the time and expense of marketing the Property and the tenants have failed to vacate. The Tenancy commenced 21 January 2020. The Notice to Leave was issued by email on 6 November 2023 on the ground that the landlord intended to sell the let Property. The tenant has failed to vacate. They have lodged details of the notice to the local authority and also a web printout of the property being actively marketed on the website. The landlord does intend to sell the let property. The reason is that having the Property is preventing him from moving on in his own personal life and buying his own property to live in. He has no connection with the area in which the Property is situated. He suffered a bereavement after his parents went into a care home. He lives and works in Edinburgh.
9. Ms McAlpine said that the tenants are two single males. She understands that they are in employment.
10. Mr Law said that the tenants are brothers and that they are working. The rent has been static and has not been subject to any rises since they have been tenants. There are no rent arrears. Before the solicitors were involved, he was upfront and told the tenants that he intended to sell. He was not in a hurry to get them to leave and discussed timings. They were content with the minimum period. The Property was marketed with another agent but had to be taken off the market. The terms were always agreeable to the tenants at the time and then after some time had passed and he got the surveyor report, the Respondents would decide that they had been coerced or bullied into leaving the flat. After the fact, they said something different. It is not yet on the market on this occasion due to previous problems.
11. Ms McAlpine said that they had to suspend marketing because they had disgruntled purchasers who went to the property and the tenant made clear that they were in the Property and had no immediate intentions to move. That was

earlier this year. It was live on the market when this Application was raised. It only became apparent on 1 February 2024 that the tenant was not agreeable to moving out voluntarily.

12. Mr Law said that he will have to get another Home Report. They last for 12 weeks. He was sent a picture of a handwritten poster in one of the windows of the flat to say that they have paid their rent and McPhee and partners and the solicitors used in the previous instance should not be trusted. Mr Law's late father sent him a picture of this sent to him from someone else before he died.

13. Mr Law said that his last contact with the tenants was within the last 3 months. It was to find out if the rent would be paid. The Respondents sometimes pay on a different date depending what day they are paid but to date they have always paid the rent.

14. The tribunal adjourned to consider the Application and the written and oral submissions by the Applicant and his representative.

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

15.1. The Applicant is the registered proprietor of the Property.

15.2. The landlord inherited the Property in about 2005.

15.3. The Property was let through a Housing Association and when they no longer required it the Applicant became the landlord.

15.4. There is a private residential tenancy agreement between the Applicant and the Respondents for the Property which started on 24 January 2020.

15.5. Prior to issuing any Notices, the Applicant told the Respondents that he intended to sell. The Respondents were initially content to vacate the Property in the statutory time period.

15.6. On 6 November 2023, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondents.

15.7. The Applicant has given the Respondents at least 84 days' notice that he requires possession.

15.8. The Application to the tribunal was made on 13 February 2024.

- 15.9. The Applicant intends to sell the Property on the open market or at least market it for sale within three months of vacant possession.
- 15.10. The Applicant no longer wishes to be a landlord in the area in which the Property is situated.
- 15.11. The Applicant wishes to sell the Property to buy his own home in a different area in Edinburgh, where he is currently renting a property.
- 15.12. The Applicant is unable to buy his home while he retains the Property.
- 15.13. The Property was previously marketed for sale by a different selling agent but the marketing had to be suspended because of issues with statements being made to prospective purchasers that the Respondents did not intend to leave the Property.
- 15.14. The Applicant has had the expense of instructing multiple home reports.
- 15.15. The Property was actively marketed again for sale from on or about 5 January 2024.
- 15.16. The Respondents were due to vacate the Property by 1 February 2024 but did not do so.
- 15.17. On a date unknown during marketing, there was a sign in a window of the Property which said words to the effect that the Respondents are not leaving the Property and made negative remarks about the Applicant's Representative and the previous selling agent.
- 15.18. The Respondents are two single males who are employed.
- 15.19. The Respondents have not opposed the Application for eviction.
- 15.20. The Respondents have not participated in the proceedings and did not attend the CMD on 14 August 2024 despite receiving notification by Sheriff Officers to attend.
- 15.21. There are no rent arrears as at 14 August 2024.

16. Findings in fact and law

16.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.

16.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

Discussion

17. 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.

18. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case.

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.

14 August 2024

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair