



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/24/0133

Re: Property at 24 North Street, Kettlebridge, Cupar, KY15 7QJ (“the Property”)

Parties:

Mr Stewart Rankin, formerly of Pap Inn, By Kingskettle, Cupar, KY15 7TN and now of 6 Strathaven Road, Stonehouse, Larkhall, ML9 3EN (“the Applicant”)

Mr Jamie Thompson and Ms Maria McLaughlin, 24 North Street, Kettlebridge, Cupar, KY15 7QJ (“the Respondents”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”), which took place by telephone conference on 28 August 2024, the Applicant was not in attendance but was represented by Mrs Jacqueline Barr of Streets Ahead Scotland. The Second Respondent was present in her own right and on behalf of the First Respondent.

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

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondents in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 1 November 2018.
- ii. On 30 May 2023, the Applicant served on the Respondents by hand a hard copy Notice to Leave requiring the Respondents remove from the Property by 1 September 2023.
- iii. The Respondents acknowledged and signed for the Notice to Leave on 30 May 2023.
- iv. The Notice to Leave proceeds upon Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)

- v. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Mrs Barr for the Applicant made the following oral submissions to supplement the application and supporting papers already lodged:-

- i. The Applicant seeks an eviction order.
- ii. The Applicant previously had a mortgage over the Property in favour of Lloyds Bank. That mortgage was an interest only type mortgage due for repayment in full in July 2023.
- iii. There was no possibility of the mortgage being converted to an interest and capital repayment type mortgage. The mortgage is cheaper as an interest only mortgage but that requires the Property be sold at the end of the agreed interest only period.
- iv. The Applicant borrowed £77,000 from his own business, Stewart Rankin Agencies Limited, by way of a Director's Loan in order to repay the mortgage to Lloyds Bank over the Property. Reference was made to the TSB Account Statement of Stewart Rankin Agencies Limited, to the Royal Bank of Scotland Account Statements and the Statements of Lloyds Bank within the application papers which showed the transfers of funds.
- v. The Applicant previously invited the Respondents to buy the Property but that did not take place.
- vi. The Director's Loan from Stewart Rankin Agencies Limited was repaid in February 2024 for the end of the company's financial year.
- vii. The Applicant also sold his own residence to move closer to his family. He was homeless for a short period as he had insufficient funds to buy another property. He took a further Director's Loan from Stewart Rankin Agencies Limited again in a sum of £77,000 to assist funding the purchase of a new property for himself and his wife. That Director's Loan is repayable by February 2025.
- viii. There is no mortgage over the Property or the Applicant's new home.
- ix. The Applicant owns no other rental properties.
- x. The Applicant is 65 years of age.
- xi. The Applicant's wife is 54 years of age. She has had a heart attack and a stroke and the Applicant looks after her. The Applicant works part-time in his own business but has required to take time out of the business to look after his wife.
- xii. The situation has been very stressful for the Applicant and his wife.
- xiii. He has no finances to continue to rent the Property.

At the CMD the Second Respondent made the following oral representations:-

- i. The Respondents live in the Property with their children aged 16, 14 and 8 years of age.
- ii. The First Respondent is self-employed valeting cars.
- iii. The Second Respondent is employed part-time as a Personal Assistant.
- iv. Neither the Respondents nor their children have any disabilities.
- v. The rents for 3 bedroom properties in the private sector are high.
- vi. The Respondents have applied to Fife Council for accommodation. They have been advised that an eviction order is need for their application to progress. They have 50 housing points at present. Their application will go to the top of the list if an eviction order is granted.
- vii. The Respondents would prefer to stay in Kettlebridge, Ladybank or the surrounding areas. They would prefer their younger daughter not to have to move school. They have been advised by Fife Council to consider a property further afield.

- viii. They are entitled to a 4 bedroomed property but would accept a 3 bedroomed property to stay near where they presently live.
 - ix. The uncertainty of the situation is very worrying for the Respondents.
- The Tribunal thereafter adjourned to consider the written and oral submissions of the parties.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant leased the Property to the Respondents in terms of the PRT") that commenced on 1 November 2018.
- ii. On 30 May 2023, the Applicant served on the Respondents by hand a hard copy Notice to Leave requiring the Respondents remove from the Property by 1 September 2023.
- iii. The Respondents acknowledged and signed for the Notice to Leave on 30 May 2023.
- iv. The Notice to Leave proceeds upon Ground 1 of Schedule 3 of the 2016 Act.
- v. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The Applicant previously had an interest only mortgage over the Property in favour of Lloyds Bank due for repayment in full in July 2023.
- vii. The mortgage could not be converted to an interest and capital repayment type mortgage.
- viii. The Applicant borrowed £77,000 from his own business, Stewart Rankin Agencies Limited, by way of a Director's Loan in order to repay the mortgage to Lloyds Bank over the Property. The mortgage was repaid on 27 June 2023 in a sum of £76,180.35.
- ix. The Director's Loan from Stewart Rankin Agencies Limited was repaid in February 2024 for the end of the company's financial year.
- x. The Applicant has also sold his own residence to move closer to his family. He took a further Director's Loan from Stewart Rankin Agencies Limited again in a sum of £77,000 to assist funding the purchase of a new property for himself and his wife. That Director's Loan is repayable by February 2025.
- xi. There is no mortgage over the Property or the Applicant's new home.
- xii. The Applicant owns no other rental properties.
- xiii. The Applicant is 65 years of age.
- xiv. The Applicant's wife is 54 years of age. She has had a heart attack and a stroke and the Applicant looks after her. The Applicant works part-time in his own business but has required to take time out of the business to look after his wife.
- xv. The Respondents live in the Property with their children aged 16, 14 and 8 years of age.
- xvi. The First Respondent is self-employed valeting cars.
- xvii. The Second Respondent is employed part-time as a Personal Assistant.
- xviii. Neither the Respondents nor their children have any disabilities.
- xix. The Respondents are unable to secure alternative accommodation in the private sector due to rents being so high.
- xx. The Respondents have applied to Fife Council for accommodation. They have been advised that an eviction order is need for their application to progress. They have 50 housing points at present. Their application will go to the top of the list if an eviction order is granted.
- xxi. The Respondents would prefer to stay in Kettlebridge, Ladybank or the surrounding areas. They would prefer their younger daughter not to have to move school. They have been advised by Fife Council to consider a property further afield.

- xxii. They are entitled to a 4 bedroomed property but would accept a 3 bedroomed property to stay near where they presently live.

Reasons for Decision

There were no disputed factual matters between the parties.

The application proceeds upon ground 1 of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(1) It is an eviction ground that the landlord intends to sell the let property.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
- (a) is entitled to sell the let property,*
- (b) 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*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
- (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a proposal of Galbraith dated 12 January 2024 in terms of which Galbraith offer to market the Property for sale. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account the following:-

- i. The Applicant's finances are strained and the Tribunal cannot compel him to continue the tenancy where to do so would be to his financial detriment.
- ii. The Applicant has additional commitments caring for his wife and has moved further away from the Property to be nearer other family members.
- iii. Whilst the Respondents would prefer to continue to live in the Property with their family there were no compelling reasons offered that outweighed those factors outlined above that justify the Applicant's desire to sell the Property.

On that basis the Tribunal considered it reasonable to grant an eviction order.

The Tribunal hope the granting of the order will now allow the Respondents to attain the priority they need to be allocated suitable accommodation by Fife Council.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.

Gillian Buchanan

Legal Member/Chair

28 August 2024
Date