



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/0876

Re: Property at 27F Ewing Road, Lochwinnoch, Renfrewshire, PA12 4BH (“the Property”)

Parties:

Mrs Fouzia Amrez, 136 Bryanston Road, Solihul, Birmingham, B91 1BP (“the Applicant”)

Miss Nicolle Boyer, Mr Thomas Barber, 27F Ewing Road, Lochwinnoch, Renfrewshire, PA12 4BH (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was not reasonable to grant an order for eviction and dismissed the application.

Background

1. By application dated 21 February 2024 the applicant seeks an order for eviction relying on ground 1 in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Notice to leave with proof of service
 - Homeowners Report dated 15 February 2024

Case management discussion (“cmd”) – 3 September 2024 – teleconference

3. The applicant was represented at the cmd by Alison Spence, letting agent, McTurk & Muir Lettings Ltd. The applicant’s husband, Amrez Yaqoob was also in attendance. He explained that the applicant was unavailable to attend as she was attending a wedding in Saudi Arabia. Both respondents were in attendance.
4. Ms Spence explained that the applicant was seeking an order for eviction relying on ground 1. The respondents stated that they were seeking to defend the action on the basis that it was not reasonable to grant an order.
5. There was no dispute between parties regarding the creation of the tenancy. The respondents’ did not dispute that the applicant was entitled to sell the property and was genuine in her intention to sell the property.
6. 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.*
7. As it was not disputed that paragraphs (2)(a) and (b) had been established the discussion focused on the question of whether it was reasonable to grant an eviction order.

8. The Tribunal followed the approach in *Caroline Manson and David Downie v Virginie Turner and Iain Turner* [2023] UT 38 para 7 in hearing from parties in relation to all relevant facts to be taken into account in assessing the reasonableness of granting an order.

Evidence on behalf of the applicant

9. Ms Spence confirmed that the property had been purchased in 2018. The respondents had moved into the property in 2018. Mr Yaqoob explained that the property had been purchased as an investment with the intention that it would be rented out. The property was a 2 bedroom maisonette flat. The rent payable for the flat was £386.25. Mr Yaqoob stated that another investment property had been purchased by the applicant around the same time in Kirtkintilloch. This property was also being sold.
10. Mr Yaqoob stated that the primary reason for the decision to sell the property was the low level of rent being paid and the fact that the applicant wished to use the money from the sale for other purposes. He stated that the rental level was much lower than from other comparable properties in the area. He stated that initially the applicant had decided not to increase the rent to help out the respondents however that position was no longer viable. Mr Yaqoob stated that with the current level of rent it was not possible for the applicant to carry out essential repairs to the property.
11. Ms Spence confirmed that in her opinion the rent was much lower than would be payable for comparable properties in the locality. She explained that the rules on rent increases meant that the next possible increase would be a 12.5% which would be possible in September 2024. This would increase the rent to £438.92 which was still below the market rate that could be achieved which she stated to be £700-£750 per calendar month.
12. Ms Spence stated that the respondents had always paid their rent on time and there were no issues with their conduct as tenants.
13. Mr Yaqoob stated that he is a general practitioner. His wife is not in employment. He confirmed that there is no mortgage outstanding for the property. He explained that his wife wished to sell the property so that the

money could be used to help with the costs of their daughter's wedding and also to help their daughter purchase a property.

14. Mr Yaqoob stated that when they had decided to sell the property, they asked the respondents if they wanted to buy it. They had declined. He stated that they had now secured a prospective purchaser. The prospective purchaser had also bought their other property in Kirkintilloch. He intended to rent the property out but was not prepared to buy the property with a sitting tenant. Mr Yaqoob stated that the applicant was concerned that any delay in obtaining an eviction order may lead to the prospective purchaser losing interest in the property.

Evidence on behalf of the respondents.

15. Ms Boyer spoke on behalf of both respondents. She confirmed that they were in a relationship and resided in the property with their 6 year old daughter. Ms Boyer advised that her daughter attended the local school where she was very happy.
16. Ms Boyer stated that she was currently pregnant with a due date of 21 October 2024. She explained that the pregnancy had not been straightforward and that she was under close medical supervision due to kidney infections, pernicious anaemia and other complications. She explained that the stress of the eviction proceedings had impacted her wellbeing throughout her pregnancy.
17. Ms Boyer advised that her partner, Thomas Barber was employed as an apprentice cooper. He suffers from epilepsy for which he is prescribed medication.
18. Ms Boyer stated that she is employed as a nurse, working primarily at Queen Elizabeth hospital. She was currently on maternity leave, taken early due to the issues with her pregnancy.
19. Ms Boyer stated that the respondents had been doing everything they could to find alternative accommodation however there was an acute shortage of suitable properties available for private rental. She had registered with the local authority and was on the waiting list. She stated that she was also looking at properties available to buy. She did not wish to buy the current property as it was in her view in a poor state of repair. She had looked at properties outwith

the immediate area but as neither respondent drove, they were concerned at how their daughter would get to school if they moved away.

20. Ms Boyer stated that her partner had grown up in Lochwinnoch. They relied on family support in the area. This had been particularly the case during her pregnancy. She explained that Mr Barber's mother lived on the same street and looked after her granddaughter regularly.

21. Ms Boyer stated that she had raised repairs issues with the landlord and an assessment had been carried out by the letting agent. In particular she stated that repairs were required to the veranda and front door of the property. She also stated that the kitchen and bathroom needed to be upgraded.

Findings in fact

22. Parties entered into a private rented tenancy agreement in 2018.

23. The rent payable in respect of the tenancy agreement is £386.25.

24. The landlord is entitled to sell the property and intends to sell the property.

Findings in fact and law

25. It is not reasonable to grant an order for eviction.

Reasons for the decision

26. Neither party disputed the evidence provided by the other party and set out at paragraphs 9-21 above. The Tribunal found all parties and their representatives to be straightforward and credible and accepted the evidence they provided as truthful in its entirety.

27. The Tribunal accepted that paragraphs 2(a) and (b) of ground 1 had been established. The Tribunal then considered the evidence from parties and whether the personal circumstances of parties and other facts were relevant to granting an order.

28. The Tribunal gave particular weight to the personal circumstances of the respondents. The Tribunal was particularly mindful of the impact of an eviction order on Ms Boyer given that her due date was imminent and that she had not had a straightforward pregnancy. In the competing factors in relation to the

reasonableness of granting an order Ms Boyer's pregnancy was a key factor taken into consideration by the Tribunal.

29. The Tribunal also gave weight to the fact that the respondents' conduct as tenants had been faultless. They were both in employment locally and had been making genuine efforts to find alternative accommodation without success. The lack of suitable alternative accommodation was outwith their control. It was likely that if an eviction order was granted the respondents would struggle to find somewhere else to live.
30. The Tribunal gave weight to the fact that the property had been the only home for the respondent's 6 year old daughter and that it would be unsettling and disruptive to her if the family were evicted.
31. The Tribunal accepted that the respondent's were looking for accommodation locally and would also be looking at purchasing a property. This factor meant that if an eviction order was not granted they may vacate the property in any event.
32. The Tribunal did not doubt that the applicant was acting in good faith and intended to sell the property and use the funds to help her daughter. The Tribunal had sympathy with the financial impact of a relatively low rent on the applicant. However, the applicants did not have a mortgage over the property and the Tribunal considered that they were not experiencing extreme financial distress as a result of owning the property. Whilst the Tribunal accepted that being unable to sell the property would have a negative impact on the applicant's financially this was fairly limited. In this regard, the Tribunal gave weight to the fact that the applicant would continue to have rental income from an unmortgaged property with reliable sitting tenants. The Tribunal also took account of the fact that the applicant had purchased the property in the expectation that he would be able to sell it when he wished.
33. When the impact on the applicant of not obtaining an order was set against the impact an eviction order would have on the respondents the Tribunal determined that the impact on the respondents was much greater and in particular the impact on the respondents' child and her own health were significant.

34. Weighing these competing factors, the Tribunal was not satisfied that it was reasonable to grant an order for eviction and proceeded to dismiss the application.

Decision

The Tribunal determined that it was not reasonable to grant an order for eviction and dismissed the application.

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.

Mary-Claire Kelly

Legal Member/Chair

3 September 2024
Date