



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/24/0930

**Re: 26/4 Balmwell Grove, Liberton, Edinburgh, EH16 6HB
 (“the Property”)**

Parties:

**Mrs Margaret Ann Pender, 9 Essex Park, Edinburgh, EH4 6LH
 (“the Applicant”)**

**Mr David Hunter and Miss Suzan Kartal, 26/4 Balmwell Grove, Liberton,
 Edinburgh, EH16 6HB
 (jointly and severally, “the Respondents”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Janine Green (Ordinary Member)

Present:

The case management discussion took place at 2pm on Friday 23 August 2024 by teleconference call (“**the CMD**”). The Applicant was not present but was represented by James Cuthbertson of Gillespie Macandrew, solicitors. The Respondents were both present. The clerk to the Tribunal was Susan Reidpath.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 1 of schedule 3 to the 2016 Act against the Respondents.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondents in respect of the Property on the basis of ground 1 (the landlord intends to sell the Property).
3. Ground 1 of schedule 3 to the 2016 Act requires that the landlord (so, the Applicant):
 - “(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.”
4. The application form was dated 26 February 2024 and the Applicant provided copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondents dated 25 and 27 May 2020 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 4 October 2023 addressed to the Respondents at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 31 December 2023 and that the eviction ground was “Your Landlord intends to sell the Let Property” (ground 1).
 - c. covering e-mail to both of the Respondents (using the e-mail addresses for notices set out in the Tenancy Agreement) dated 4 October 2023 attaching the Notice to Leave.
 - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail sending it to the local authority on 26 February 2024.
 - e. an e-mail from Annan solicitors and estate agents dated 22 March 2024 confirming that they were instructed in the sale of the Property.
 - f. a letter of engagement from Elmslies solicitors dated 25 April 2024 in relation to the sale of the Property.
5. A notice of acceptance of the application was issued dated 23 April 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 26 February 2024 and 28 March 2024.

6. Each of the Respondents was sent notice of the CMD by letter dated 23 July 2024, which was confirmed (in the certificate of intimation from Christopher Andrew of Walker Love, sheriff officers) as having been served personally on the second Respondent and having been served on the first Respondent by leaving it in the hands of the second Respondent on 24 July 2024.
7. The Respondents had not provided written representations in advance of the CMD.
8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The application paperwork noted that the Applicant wanted to sell the Property “to get her affairs in order”. The Applicant’s representative explained that the Applicant was 62 years old and had recently retired. He also explained that the mortgage rate on the Property had recently increased from approximately 2.6% to 8.5% and that ongoing repairs to the Property had cost over £3,800 in the last year. The Applicant’s representative stated that the Applicant had sought to mitigate this by seeking to increase the rent but that the Respondents did not agree to that and could not afford a rent increase. Therefore, he stated that it was uneconomical for the Applicant to retain the Property and she intended to sell it.
10. The Applicant’s representative confirmed that the Applicant had appointed Elmslies solicitors and estate agents to sell the Property once vacant possession was obtained.
11. The Respondents confirmed that they were still in occupation of the Property, that they had three children (aged 9, 2 and 1) who lived with them and that the Property had not been adapted for them.
12. The Respondents confirmed that they did not object to the granting of an eviction order.
13. Notwithstanding that the Respondents were not objecting to the granting of an eviction order, both parties were asked to outline why it would be reasonable (or not) to grant an eviction order.
14. With regard to why it would be reasonable to grant an eviction order:
 - a. The Applicant’s representative submitted that it would be reasonable on the basis that the Applicant was intending to sell the Property in order to fund her retirement and that it was no longer economical for the Applicant to continue to own and rent out the Property (in light of the significant increase in the mortgage rate and the cost of ongoing repairs). He also submitted that the Applicant had begun the process for selling the Property and that the Respondents had applied for support from the local authority for rehousing. He noted that having an eviction order may assist the Respondents in obtaining local authority housing.

- b. The Respondents submitted that it would be reasonable on the basis that they were struggling financially and could not afford the rent increase and they understood that having an eviction order granted may help them in getting support from the local authority to find alternative housing.

FINDING IN FACT

- 15. The Tenancy Agreement stated that notices to be served under the Tenancy Agreement may be served using the email addresses set out in the Tenancy Agreement.
- 16. The Tribunal was satisfied, on the balance of probabilities, that:
 - a. the Notice to Leave was valid and had been validly served;
 - b. the section 11 notice was valid and had been validly served:
- 17. The Tribunal noted that the Applicant was the registered landlord of the Property.
- 18. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number MID64601).
- 19. The Tribunal was satisfied, on the balance of probabilities, that the Applicant intended to sell the Property for market value within 3 months of the Respondents ceasing to occupy it.

REASON FOR DECISION

- 20. The Tribunal was satisfied, on the balance of probabilities, that:
 - a. The requisite notices were valid and had been validly served (and received by the Respondents);
 - b. As the Applicant was the registered proprietor of the Property, the Applicant was entitled to sell the Property;
 - c. It was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. primarily, there was no objection to the eviction order from the Respondents and, indeed, the Respondents wanted an eviction order to be granted;
 - ii. the costs being incurred by the Applicant had increased significantly, particularly as a result of changes in mortgage rates; and
 - iii. the Respondents were struggling financially and could not afford to pay an increased rent.

21. Accordingly, the Tribunal found that ground 1 (landlord intends to sell) of schedule 3 to the 2016 Act applied.

DECISION

22. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 1 (landlord intends to sell).

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

P S Woodman

Chair

23 August 2024

Date