

Housing and Property Chamber
First-tier Tribunal for Scotland



in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/1120

Re: Property at 12 Hillfoot Terrace, Carluke, ML8 4JN (“the Property”)

Parties:

Mr Ian Frame, Seaforth Courtyard, Braidwood, Carluke, ML8 5NE (“the Applicant”)

Miss Carol Patterson, 12 Hillfoot Terrace, Carluke, ML8 4JN (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

1. By application dated 5 April 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the Act that the landlord intends to sell the Property. The Application comprised copy tenancy agreement between the Parties, copy instruction to local solicitors in respect of the sale of the Property, copy Notice to Quit, copy Notice to Leave with proof of service, and copy Notice under

Section 11 of the Homelessness Etc (Scotland) Act 2003 to South Lanarkshire Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 19 August 2024 at 14.00 by telephone conference and intimated to the Parties.

CMD

3. The CMD took place on 19 August 2024 at 14.00 by telephone. The Applicant, Mr. Frame, took part and was not represented. He was accompanied by Ms. Mathieson as a supporter. The Respondent, Mrs. Patterson, took part and was not represented.
4. Mr. Frame confirmed that he sought an eviction Order to allow him to sell the Property.
5. Mrs. Patterson did not formally oppose the Application and explained that she had not been able to secure alternative accommodation. She explained that she has had an application with South Lanarkshire Council for ten or eleven years as the Property is too small for her family's needs. Mrs. Patterson explained that her housing officer had advised her that she should wait for an eviction order to be granted and contact the Council at that time for assistance.
6. With regard to her personal circumstances, Mrs. Patterson advised that she has three school age children, two daughters aged twelve and nine years and a fifteen year old son. She stated that her son has autism and ADHD and so requires additional support. Mrs Patterson explained that she receives state benefits for her son as his carer. Mrs. Patterson explained that the Property has two bedrooms and, as her family require at least a three bedroom house to take account of her son's condition, the Property is not wholly suitable and that the Council should be able to take account of this need.
7. Mr. Frame explained that he is sixty years old and is self-employed as a motor trader. He stated that he hopes to retire and requires to sell the Property to pay off personal debts and to assist his two sons with their housing needs. Mr. Frame confirmed that the does not have a portfolio of properties and that the Property is his only rental property.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a tenancy of the Property between the Parties;
 - ii) The Applicant is entitled to sell the Property and intends to sell the Property to release capital to pay personal debts and to assist his sons;
 - iii) The Applicant does not have any other rental properties to sell;
 - iv) The Property is a two bedroom property;
 - v) The Respondent is in receipt of benefits;
 - vi) The Respondent resides with her three school age children, one of whom has medical needs;
 - vii) The Respondent requires a three bedroom property to meet the full needs of her family;
 - viii) The Respondent has made applications social housing without success.

Issue for the Tribunal

9. The statutory ground and procedure being established, and the Application not being opposed formally, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
12. The Tribunal then looked to balance the rights and interests of both parties.
13. The Tribunal had regard to the fact that the Applicant requires to sell the Property to mitigate his own and his sons’ financial commitments. The Tribunal had regard to the Applicant’s age and his intention to retire.
14. The Tribunal had regard to the Respondent’s position and that of her family in respect of having been unable to secure suitable accommodation and her son’s medical issues, and, had great sympathy for her. The Tribunal noted that the

Respondent does not oppose the Application and is seeking alternative accommodation. The Tribunal had regard to the fact that the Respondent has had an application with the local authority for a considerable time and that, if evicted, she and her family will be entitled to assistance in terms of Part II of the Housing (Scotland) Act 1987 and are likely to be eligible to access accommodation suitable for their needs.

15. On balance, the Tribunal took the view that not granting the Order would have a greater detrimental impact on the Applicant, as it would place him and his sons in financial need, than it would on the Respondent who has a route to obtain alternative housing.

16. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. The Tribunal determined to stay the Order until 19 October 2024 to allow the Respondent sufficient time to secure suitable permanent accommodation from the local authority and to minimise the likelihood of being accommodated in temporary housing.

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.

K Moore

Legal Member/Chair

19 August 2024

Date