



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/24/1599

Re: Property at 31 Carlowrie Place, Gorebridge, EH23 4XL (“the Property”)

Parties:

Mrs Elaine Collins, 9 Cleuch Avenue, North Middleton, Gorebridge, EH23 4RP (“the Applicant”)

Mrs Christine Stevenson, Mr James Stevenson, 31 Carlowrie Place, Gorebridge, EH23 4XL; 31 Carlowrie Place, Gorebridge, EH23 4XL (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for possession relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) Act 2016.

Background

1. By application dated 4 January 2024 the applicant seeks an order for possession relying on ground 1 (landlord intends to sell).
2. The following documents were lodged with the application:
 - Copy tenancy agreement
 - Section 11 notice
 - Notice to leave and proof of service
 - Petition for sequestration dated 30 August 2023

- Copy correspondence between parties

Case management discussion – 4 September 2024 – teleconference

3. The applicant was represented by Jaqueline Barr, Director, A M Lettings. Both respondents were in attendance. Ms Barr stated that the applicant sought an order for repossession as she wished to sell the property due to her current financial and personal circumstances. Mr Stevenson explained that he was not opposed to an order for eviction being granted as he was in the process of obtaining alternative accommodation from the local authority.
4. Ms Barr stated that the tenancy had commenced on 28 February 2018. She stated that there had been long term issues with the payment of rent. Arrears had been building up for some time and were currently approximately £16,000. Ms Barr stated that the applicant had a large amount of debt. The HMRC had lodged a petition to sequestrate the applicant. The applicant had avoided sequestration by selling another property however she continued to experience financial difficulties. Ms Barr explained that the extensive rent arrears had impacted on the applicant's finances. She stated that the applicant had extensive mortgage arrears in her principal home and the lender was in the process of seeking to recover possession. Ms Barr stated that the property required repairs to be carried out however the applicant could not afford to carry out the necessary works. Ms Barr stated that the applicant is 69 years old. Her recent financial difficulties had impacted on her mental health. In addition, she had been diagnosed with cancer and also had back pain.
5. Mr Stevenson explained that the respondents resided in the property with their 6 children all aged 16 and under. The family have significant additional and medical needs. Mr Stevenson explained that he has applied for housing assistance from the local authority and the family have been awarded maximum points in the allocation process. Mr Stevenson stated that as the property had 3 bedrooms the family were overcrowded and it would be beneficial to them to move to a local authority tenancy.
6. Mr Stevenson disputed liability for any rent arrears. He stated that there were serious repairs issues in the tenancy including mould and dampness. He stated that he had withheld rent on the advice of local authority housing advisers due

to the condition of the property and the applicant's failure to carry out necessary repairs.

7. Ms Barr stated that access had been denied to tradespeople seeking to carry out repairs. This was disputed by Mr Stevenson.

Findings in fact and law

8. Parties entered into a private rented tenancy agreement with a commencement date of 28 February 2018.
9. The applicant is the sole owner of the property.
10. The applicant intends to sell the property.
11. It is reasonable to grant an order for eviction.

Reasons for the decision

12. 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.

13. The Tribunal accepted the evidence of Ms Barr that the applicant intended to sell the property. This was not disputed by the respondents.

14. In relation to whether it was reasonable to grant the order the Tribunal gave weight to the personal circumstances of the applicant and the reasons given for her decision to sell the property. The Tribunal took into account that the applicant was in serious financial difficulties and at risk of losing her own home due to mortgage arrears. The Tribunal noted that parties were in dispute regarding the reason for non-payment of rent but took into account that the non-payment of rent would have an ongoing financial impact on the applicant. The Tribunal gave particular weight to the age and health of the applicant and accepted that the ongoing issues with the property were having an impact on her wellbeing.
15. The Tribunal noted that the property was unsuitable for the needs of the respondents and their children and that the family were actively seeking alternative accommodation. The Tribunal took into account that there was an active local authority housing application which may provide alternative accommodation at the end of the current tenancy and that the respondents had the maximum amount of points available.
16. Taking the above factors into account the Tribunal was persuaded that on balance it was reasonable to grant an order for eviction in favour of the applicant as the impact on her of not granting an order was great, whilst the respondents had a reasonable prospect of alternative accommodation and did not oppose an order being granted.

Decision

The Tribunal determined to grant an order for eviction.

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.

**Legal Member:
Mary-Claire Kelly**

Date: 04 September 2024

