



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/24/1744

Re: Property at 26a Guildhall Street, Dunfermline, KY12 7NS (“the Property”)

Parties:

Mr Douglas Barr, 41 Pleasance Brae, Cairneyhill, Dunfermline, KY12 8FA (“the Applicant”)

Ms Li White, 26a Guildhall Street, Dunfermline, KY12 7NS (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 16 October 2024, the Applicant was present and was represented by Mr Dalziell of Abbey Forth Property Management. The Respondent was neither present nor represented and had lodged no written representations.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

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

Background

The Tribunal noted the following background:-

- i. The Applicant and his wife, Karen Jane Barr, are the heritable proprietors of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 6 March 2019.
- iii. The rent payable in terms of the PRT is £495 per calendar month.

- iv. On 28 November 2023, the Applicant served on the Respondent by email a Notice to Leave dated 28 November 2023 requiring the Respondent remove from the Property by 23 February 2024 on the basis that he requires to sell the Property.
- 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 Mr Dalziell for the Applicant and the Applicant made the following additional oral representations:-

- i. The Respondent is believed to still be in occupation of the Property.
- ii. The Applicant owns a hairdressing salon on the ground floor and the Property is situated above. He sees the Respondent coming and going from the Property regularly.
- iii. The rent is one month in arrears.
- iv. The rent is paid by Universal Credit directly to the Respondent who pays the rent to the letting agent.
- v. The Respondent is understood to have a son of around 12 years old but he has not been seen at the Property for around a year.
- vi. The Respondent previously contacted Fife Council to say she was being made homeless and was advised not to leave the Property until Tribunal proceedings had run their course.
- vii. The Applicant and his wife have separated and live in the same house which is on the market for sale. Mr Dalziell's firm is dealing with that sale.
- viii. The Property also requires to be sold as it is in joint names. A buyer has already been found who will upgrade the Property and re-let. The buyer's offer is oral only at this stage. Mr Dalziell's firm is also dealing the sale of the Property.
- ix. There is a mortgage over the Property in favour of Birmingham Midshires ("BM"). £58,000 is owed to BM. The mortgage ended in May 2023. However, BM have extended the term to November 2024 provided the ongoing interest is paid. The mortgage is in the joint names of the Applicant and his wife and will be cleared from the proceeds of sale in due course.
- x. The Applicant seeks an eviction order.

Findings in Fact

- i. The Applicant and his wife, Karen Jane Barr, are the heritable proprietors of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 6 March 2019.
- iii. The rent payable in terms of the PRT is £495 per calendar month.
- iv. On 28 November 2023, the Applicant served on the Respondent by email a Notice to Leave dated 28 November 2023 requiring the Respondent remove from the Property by 23 February 2024 on the basis that he requires to sell the Property.
- v. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The Respondent is believed to still be in occupation of the Property.
- vii. The Applicant owns a hairdressing salon on the ground floor and the Property is situated above. He sees the Respondent coming and going from the Property regularly.
- viii. The rent is one month in arrears.
- ix. The rent is paid by Universal Credit directly to the Respondent who pays the rent to the letting agent.

- x. The Respondent is understood to have a son of around 12 years old but he has not been seen at the Property for around a year.
- xi. The Respondent previously contacted Fife Council to say she was being made homeless and was advised not to leave the Property until Tribunal proceedings had run their course.
- xii. The Applicant and his wife have separated and live in the same house which is on the market for sale.
- xiii. The Property also requires to be sold as it is in joint names. A buyer has already been found who will upgrade the Property and re-let. The buyer's offer is oral only at this stage.
- xiv. There is a mortgage over the Property in favour of BM. £58,000 is owed to BM. The mortgage ended in May 2023. However, BM have extended the term to November 2024 provided the ongoing interest is paid. The mortgage is in the joint names of the Applicant and his wife and will be cleared from the proceeds of sale in due course.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally by him and Mr Dalziell at the CMD was not challenged and was accepted by the Tribunal.

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 along with his wife from who he is separated.

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 Home Report of DM Hall dated 26 February 2024. 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 determined that it is reasonable to grant an eviction order having regard to the Applicant's separation from his wife, their need to divide their assets and the requirement that the mortgage to BM is repaid by November 2024.

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.

G. Buchanan

Legal Member/Chair

16 October 2024
Date