



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/23/4683

Re: Property at 89 Thorndean Avenue, Bellshill, ML4 2LL ("the Property")

Parties:

Mr James Connelly Johnstone, 23 Mossgiel Gardens, Uddingston, Glasgow, G71 6EP ("the Applicant")

Miss Holly Johnstone, 89 Thorndean Avenue, Bellshill, ML4 2LL ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ann Moore (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 24 September 2024, the Applicant and Respondent were both in attendance.

The parties are father and daughter respectively.

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

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced 1 February 2022.
- iii. On 25 August 2023, the Applicant served on the Respondent by hand a hard copy Notice to Leave requiring the Respondent remove from the Property by 24 November 2023.
- iv. The Notice to Leave proceeds upon Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- v. The Applicant has served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD the Applicant made the following oral representations:-

- i. The Applicant is still seeking an eviction order.
- ii. He is 53 years of age.
- iii. Previously, he lived in Ayrshire. However, his partner had mental health issues over four years and they split up. He and his partner sold their property and he received £20,000 from that sale.
- iv. Using these funds he bought the Property and moved in.
- v. The Respondent, his daughter, then fell pregnant and had nowhere to go. The Applicant therefore went to the NatWest Bank for a mortgage to buy another small house for himself, allowing him to rent out the Property to the Respondent.
- vi. The Applicant stated he has three children and no pension. He considered that if he purchased three houses these would, in effect, give him a pension when he retires and could be left to his three children to divide between them on his death.
- vii. He therefore purchased a second house in Brandon Way, Coatbridge. He had not appreciated that an Additional Dwelling Supplement would require to be paid for the purchase of that property and therefore had to find an extra £4000 to pay that tax as well as the deposit etc. He moved into that property.
- viii. The plan was to purchase a third property and to rent out both the Property and Brandon Way. However, because the price of the proposed third property was £120,000 he required to find an additional 6% of that amount by way of the Additional Dwelling Supplement as well as the deposit etc and he simply couldn't afford to proceed.
- ix. He decided to sell the property at Brandon Way. In doing so he moved in with his mother who is 77 years of age. The property at Brandon Way had only one bedroom. The dog next door barked a lot and the arrangement just did not suit him. He therefore wants to move back into the Property. He sold Brandon Way around 18 months ago. He made no profit from that sale.
- x. He has been living with his mum for 18 months.
- xi. He works full time for Octopus Energy.
- xii. He would be moving back into the Property on his own.
- xiii. His Mum's property has three bedrooms.
- xiv. He has no intention of buying any additional properties now.
- xv. The PRT that he entered into with the Respondent commenced on 1 February 2022.
- xvi. He doesn't want to fall out with the Respondent. However, he has nowhere else to live and wants to move back into the Property.

At the CMD the Respondent made the following oral representations:-

- i. She lives in the Property with her two-year-old son. She has lived there since 1 February 2022.
- ii. She had previously been living in a one-bedroom studio flat which she rented privately. She discovered she was pregnant and needed somewhere else to stay. That was when she moved to the Property.
- iii. She has been looking for alternative accommodation.
- iv. She contacted North Lanarkshire Council when she was given the date that the Applicant, her father, wished to move back in. She has 150 points with North Lanarkshire Council.

- v. The Council has said that once an eviction order is granted they will send out to her a homelessness application.
- vi. She will update the Council after the CMD.
- vii. She works part-time two days each week as a nursery practitioner.
- viii. She requires a property with two bedrooms and with a garden for her son.
- ix. There is nothing available at the moment and she accepts that she may require to go into temporary accommodation until a house becomes available thereafter.
- x. She feels she will have more security in public sector accommodation rather than a private let. She wants to go to college or university after her son begins school and therefore wants her next property to be her "house for life".

Findings in Fact

The tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of the PRT that commenced 1 February 2022.
- iii. On 25 August 2023, the Applicant served on the Respondent by hand a hard copy Notice to Leave requiring the Respondent remove from the Property by 24 November 2023.
- iv. The Notice to Leave proceeds upon Ground 4 of Schedule 3 of the 2016 Act.
- v. The Applicant has served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The Applicant is 53 years of age.
- vii. Previously, he lived in Ayrshire. He and his partner split up and sold their property. He received £20,000 from that sale.
- viii. Using these funds the Applicant bought the Property and moved in.
- ix. The Respondent fell pregnant. The Applicant therefore went to the NatWest Bank for a mortgage to buy another small house for himself, allowing him to rent out the Property to the Respondent.
- x. The Applicant purchased a second house in Brandon Way, Coatbridge. He had not appreciated that an Additional Dwelling Supplement would require to be paid for the purchase of that property and therefore had to find an extra £4000 to pay that tax as well as the deposit etc. He moved into that property.
- xi. The plan was to purchase a third property and to rent out both the Property and Brandon Way. However, because the price of the proposed third property was £120,000 he required to find an additional 6% of that amount by way of the Additional Dwelling Supplement as well as the deposit etc and he simply couldn't afford to proceed.
- xii. He sold the property at Brandon Way around 18 months ago. In doing so he moved in with his mother who is 77 years of age. The property at Brandon Way had only one bedroom. The dog next door barked a lot and the arrangement just did not suit him. He therefore wants to move back into the Property.
- xiii. The Applicant has been living with his mum for 18 months.
- xiv. He works full time for Octopus Energy.
- xv. He would be moving back into the Property on his own.
- xvi. He has no intention of buying any additional properties now.
- xvii. The Respondent lives in the Property with her two-year-old son. She has lived there since 1 February 2022.
- xviii. She had previously been living in a one-bedroom studio flat which she rented privately. She discovered she was pregnant and needed somewhere else to stay. That was when she moved into the Property.

- xix. She has been looking for alternative accommodation.
- xx. She contacted North Lanarkshire Council when she was given the date that the Applicant, her father, wished to move back in. She has 150 points with North Lanarkshire Council.
- xxi. The Council has said that once an eviction order is granted they will send out to her a homelessness application.
- xxii. She works part-time two days each week as a nursery practitioner.
- xxiii. She requires a property with two bedrooms and with a garden for her son.
- xxiv. She feels she will have more security in public sector accommodation rather than a private let. She wants to go to college or university after her son begins school and therefore wants her next property to be her "house for life".

Reasons for Decision

There were no disputed factual matters between the parties.

The application proceeds upon ground 4 of Schedule 3 of the 2016 Act.

Ground 4 states -

"Landlord intends to live in property

(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months,

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention."

Sub-paragraph 2(a) requires that the Applicant intends to occupy the Property as his only or principal home for at least 3 months. The Tribunal was so satisfied based upon the Applicant's submissions and there was no challenge to that by the Respondent.

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(b).

In assessing reasonableness the Tribunal took into account the following:-

- i. The Applicant is 57 years of age and has been living with his elderly mother for around 18 months which is not a satisfactory state of affairs.
- ii. The Applicant has no other property in which to live.
- iii. The Applicant had a plan to invest in three properties - to live in one of them and rent out the other two properties - as his pension. This plan did not come to fruition as he had not taken account of the Additional Dwelling Supplements that he would require to pay for the purchase of properties as investments. His plan was well intentioned but poorly researched and naïve. That plan failed.
- iv. The Respondent would prefer to live in public sector accommodation with her young son. She would like the security of public sector accommodation and understands she may require to go into homeless accommodation in the short term until a suitable property becomes available. That security will allow her to achieve her longer term ambitions of going to college or university after her son begins school in due course. She wants her next property to be her "house for life".

The interests of both parties are served by the grant of an eviction order. In these circumstances the tribunal considered it reasonable to grant an eviction order.

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

24 September 2024
Date