



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ref: FTS/HPC/EV/24/1279

Re: 19 Whinnyburn Place, Rosyth, KY11 2TT (“the Property”)

Parties:

Aitchison and Jones Limited, 4 Lothian Street, Dalkeith, EH22 1DS (“the Applicant”)

Professional Property Letting, 200 Gorgie Road, Edinburgh, EH11 2NX (“the Applicant’s Representative”)

Mr Kevin Thompson, 19 Whinnyburn Place, Rosyth, KY11 2TT (“the Respondent”)

Tribunal Members:

Ms Susanne L. M. Tanner K.C. (Legal Member)

Ms Elaine Munroe (Ordinary Member)

Decision

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

(1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the registered proprietor intends to sell the let Property for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants' Representative made an application to the tribunal on 18 March 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules"). The Applicant seeks the Respondent's eviction from the Property under Ground 1 of Schedule 3.
2. The Applicants' Representative provided the following documents in support of the Application:
 - 2.1. Private Residential Tenancy agreement;
 - 2.2. Copy Notice to Leave and proof of delivery by email; and
 - 2.3. Copy section 11 Notice to the Local Authority with proof of delivery by email.
3. On 19 March 2024, the tribunal's administration obtained a copy of the Title deeds for the Property which shows that the registered proprietor since 8 April 2008 is Anna Aitchison, 67 Mount Vernon Road, Edinburgh, EH16 6JH.
4. The tribunal's administration obtained a copy of the registered landlord details for the Property which show that it was registered by the Applicant limited company at an address at 2 Craighend park, Edinburgh, EH16 5XY. No agent details were registered.
5. On 10 April, 16 May and 3 June 2024, a legal member of the tribunal acting under the delegated powers of the tribunal president made a request for further information from the Applicant's Representative.
6. The Applicant's Representative provided:
 - 6.1. A letter from the accountants of the Applicant dated 19 April 2024;
 - 6.2. An estate agency agreement;
 - 6.3. Consent from the registered proprietor to the letting of the Property by the Applicant limited company, in which she is a director and shareholder; and her consent to the Application being made to the tribunal;
 - 6.4. Information about the registered proprietor and landlord; and
 - 6.5. A letter from the lender dated 14 June 2024.
7. The Applicant's Representative confirmed that the Application was made under Ground 1 of Schedule 3 of the 2016 Act.

8. On 27 June 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application on 17 October 2024 by teleconference at 1000h. The Application paperwork was personally served on the Respondent by Sheriff Officers. The Respondent was told that if he wished to submit written representations these should be sent to the tribunal by 4 October 2024.
9. The Respondent did not submit any defence or any written representations to the tribunal.

CMD: 17 October 2024, 1000h, Teleconference

10. Ms Gray from the Applicant’s Representative attended.
11. The Respondent attended.
12. The tribunal heard from both parties.

Submissions by the Respondent

13. The Respondent said he and his family have lived in the Property since around 2015. He has told the Council that an eviction application has been made and said that he and his family are on the list for council accommodation. He lives with my wife, one child under 16, three adult children and two dogs. It is a four bedroomed property. His two oldest children have recently moved back in. None of the family have disabilities or ill health. He and his wife both work and his three older children work. The council are looking for a property for the whole family but have not told him whether they can find a property. He has also been looking in the private rented sector but it is going to be double the rent. He has also been trying to find a mid-market rent. He has applied to every housing association. He said that he suffered bereavements of both parents in around March 2024. He said that he has a lot to deal with as well as the eviction proceedings.
14. The Respondent expressed an interest in purchasing the Property and asked what the price would be and whether he would get the first opportunity to buy it.

Submissions on behalf of the Applicant

15. Ms Gray said that the legal owner of the Property is Anna Aitchison. She is a Legal Director and shareholder of the company. All of the properties have always traded

through Aitchison and Jones Limited. She referred to the accountant's letter in the Application supporting documents which confirms that everything runs through Aitchison and Jones Limited. For trading purposes the properties are run through the company but the legal owner is Anna Aitchison. She referred to the email which was added to the Application documents on 5 June 2024, in which the registered proprietor consented to the tenancy agreement being entered into and consented to the tribunal proceedings.

16. In relation to the Ground replied upon, Ground 1, that the landlord intends to sell the Property or at least market it for sale at market value, within 3 months of the tenancy ceasing to occupy. The Notice to Leave was served on a different ground, Ground 1A, that the intention to sell was to alleviate financial hardship (which ground was introduced during the Covid-19 pandemic and has now been repealed). Ms Gray sought permission to proceed on Ground 1, as per the Application. The tribunal explained the request to the Respondent and he confirmed that he understood and did not have anything to add. The tribunal consented to the Application proceeding under Ground 1 in terms of section 52(5)(b) of the 2016 Act.
17. Ms Gray asked the tribunal to make the order for eviction and referred to the documents lodged. She said that the letter from the lender dated 14 June 2024 shows that if the property is not sold it is going to be repossessed. She said that the mortgage has ended and is not being renewed. It needs to be settled. That is still the case as at today's date. No Home Report has been carried out yet because it will only last for three months. Ms Gray said that sale of the Property to the Respondent is something that the Applicant would consider but that she is seeking the eviction order today. She will ask her client but as far as she is aware this situation has become fairly urgent and the Property needs to be sold as soon as possible.
18. Ms Gray said that although the Respondent has been paying towards the rent there are £2000.00 of rent arrears as at today's date, which is just under three months of rent arrears. She produced a rent statement as at 17 October 2024.
19. She submitted that in all the circumstances it was reasonable to make the eviction order today. She said that the Notice to Leave was served on the Respondent in December 2023. It is now October 2024. The mortgage company are really putting pressure on the owner to sell the Property. It is not just this Property, they all need to be sold.

Respondent's further submissions

20. The Respondent said that he had been unaware that he was in arrears. He referred to recent payments made. Once the Rent statement was produced as at 17 October 2024 he accepted that it shows £2000 of rent arrears, including £680 due today.
21. The Respondent said that his employer is also a portfolio landlord as well and that he may consider buying the Property.
22. The tribunal adjourned to consider the Application and the submissions by both parties.
23. After the adjournment, the Respondent said that he had paid £750.00 by online banking and that he intended to pay another £1250.00 through the bank today. Ms Gray confirmed receipt of the £750.00 with thanks.

24. The tribunal makes the following findings-in-fact:

- 24.1. The registered proprietor of the Property is a Director and Shareholder of the Applicant limited company.
- 24.2. The Applicant is the landlord of the Property with the consent of the registered proprietor.
- 24.3. There was a standard security over the Property which has now expired and the lender requires the Property to be sold and the loan repaid.
- 24.4. If the Property is not sold soon it is likely that the lender will seek to repossess the Property.
- 24.5. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which started in 2018. There was a previous tenancy from around 2015.
- 24.6. The Respondent lives in the Property with his wife, one child under 16 and three adult children.
- 24.7. The Respondent and his wife and the three older children are in employment.
- 24.8. As at 17 October 2024, there are rent arrears of £570.00 (taking into account a payment made by the Respondent on 17 October 2024) and rent

of £680.00 is due on 17 October 2024. The balance of arrears and rent due on 17 October 2024 is £1250.00.

24.9. On 23 December 2023, a Notice to Leave containing ground 1A of Schedule 3 to the 2016 Act was served on the Respondent.

24.10. The Applicant has given the Respondent at least 84 days' notice that it requires possession.

24.11. The Application to the tribunal was made on 18 March 2024.

24.12. The registered proprietor intends to sell the Property on the open market or at least market it for sale within three months of vacant possession.

25. Findings in fact and law

25.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.

25.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

Discussion

26. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

27. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case.

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.

17 October 2024

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**