



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/24/1326

Re: Property at 34 Philips Wynd, Hamilton, ML3 8PA (“the Property”)

Parties:

Ian Jenkins, Christine Jenkins, 29 Covanburn Avenue, Hamilton, ML3 7PX (“the Applicants”)

Jamie Neilan, 34 Philips Wynd, Hamilton, ML3 8PA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 23 December 2022.
2. The application was dated 18 March 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 5 December 2023 and said to be served upon the Respondent by their letting agent by email on that date (as permitted by the Tenancy Agreement). The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice referred to a desire to sell due to

increased mortgage rates. The Notice to Leave intimated that an application to the Tribunal would not be made before 1 March 2024.

4. The application papers included a brief and undated letter from Abode Estate Agency to the first named Applicant noting they had been instructed to market the Property for sale.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon South Lanarkshire Council on 13 March 2024 was included in the application papers.
6. Prior to the case management discussion (“CMD”), the Applicants’ agent lodged a rent statement showing there were also rent arrears for £6,071.25 as at 16 September 2024. A further email with documents followed shortly before the CMD and included pre-action protocol emails, including one sent to the Respondent on 15 August 2024. No Notice to Leave on rent arrears was lodged or referred to however.

The Hearing

7. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 October 2024 at 14:00. We were addressed by Joanne Hogg, solicitor, Stoddarts for the Applicants, though the Applicants were also in attendance and the first named Applicant gave submissions. We were also addressed by the Respondent who represented himself.
8. We sought further information from the Applicants and their agent on the reasons for the intended sale. The explanation was as follows:
 - a. The Applicants are retired.
 - b. The Property is one of four rented properties they own. Their intention was that these would all provide income for their retirement.
 - c. The Property and one other are no longer economic to let out in their view. They are considering a sale of the other property as well.
 - d. The equity from any property sold would be used towards funding their retirement.
 - e. The mortgage on the Property is currently a two-year fixed rate mortgage of around £300/m. Factoring costs are £100/m and their letting agent charges £50/m for management work.
 - f. Rent is £795/m, meaning £345/m left over to cover insurance, compliance costs, maintenance, landlord registration costs, and tax. The Applicants found that, even prior to the Respondent falling into arrears, there were times when they needed to use savings to cover costs for the Property, and so they decided to sell the Property.
 - g. At the time of the Notice to Leave, the Respondent was one month’s rent in arrears but made up the payment. Thereafter, however, he fell substantially into arrears and this only increased the financial burden.
 - h. Further, their fixed rate mortgage expires in early December 2024. Due to the rent arrears, they have been advised that they cannot obtain a new fixed rate, and have been told to expect to move onto variable rate interest of

9%, meaning monthly mortgage payments of £600/m. At that point, even if the rent was paid, there would be a shortfall in their regular monthly costs every month (excluding additional costs such as insurance, compliance costs, maintenance, and landlord registration costs).

9. In regard to reasonableness the Applicants and their agent gave the following submissions:
 - a. The significant arrears for the period to 15 October 2024 of £6,071.25 should be considered as relevant.
 - b. The financial stress of the situation, as well as the general stress of dealing with the rent arrears and eviction process, has affected their mental well-being.
 - c. The applications have taken a significant length of time to be considered to date.
 - d. They have reached out to the Respondent on the arrears, but no offer for payment has been made, and the only recent payments have been from benefit payments.
 - e. In reference to the Respondent's submissions on rehousing, they believed he would not receive an offer of rehousing until an eviction order was granted against him.
10. In regard to the Respondent's submissions, his general position was that he appreciated that the Property was not his and felt the Applicants should be entitled to do with it what they wished, but he did not wish to be evicted before being rehoused. He said that he was in contact with the local authority's homelessness team and believed he was close to the top of a list for a house in Larkhall. He did not wish to consent to eviction without confirmation of rehousing. (He expressly did not concede that his position would be improved if an eviction order was granted against him, though he confirmed that he had been asked to call the homelessness team after the hearing to discuss the outcome.)
11. On the technical issues, the Respondent said he had no recollection of receiving the Notice to Leave but he had now read it and did not seek a defence in regard to the Notice. In regard to the test in ground 1, he did not dispute that the Applicants sought to sell and did not seek a defence in regard to their reliance on that ground. His sole defence was thus restricted to reasonableness, based on his personal circumstances and that he had not yet been rehoused.
12. In regard to reasonableness, the Respondent explained the following:
 - a. He was recovering from a significant period of poor mental health, during which he had not been able to work, and the arrears had developed.
 - b. During this time he had, however, arranged to obtain Jobseekers Allowance which had made some payments towards rent (though had not covered the passing rent).
 - c. His health had now improved and he had recently restarted work.
 - d. He now wished to make payments towards the arrears (which was considered in more detail in a conjoined arrears application (CV/24/1327)). He did not dispute that arrears for the period to 15 October 2024 were £6,071.25.
 - e. The Property was a two-bedroom flat.

- f. He lived alone but his son stayed with him most weekends.
 - g. The Property was not specially adapted for his or his son's use but its location was especially suitable for him as it was five minutes away from his son's usual address. It was also close to the Respondent's GP with whom he was still receiving regular treatment.
13. We took the parties through any matters which were disputed or required further evidence. No matters seemed disputed but the Respondent submitted that further evidence would assist the Tribunal. He proposed a continuation so he could obtain two pieces of evidence:
- a. A report from his GP on his health condition. We asked him what assistance this may give us in deciding whether to evict now, as his health has improved and he has returned to work. He conceded that it may be of limited assistance.
 - b. A letter from the local authority to confirm the status of his rehousing application.
- The Applicants' agent disputed that either document would result in significant further information for the Tribunal's consideration and opposed any continuation for further documentation to be produced.
14. We asked both parties to consider whether, if we were minded to grant the eviction order today, whether there should be a suspension. The Respondent said there should be but was not able to state what length. He had no information from the local authority as to the likely timescale for rehousing. The Applicants' agent strongly argued against any suspension on the basis that there was a lack of any information on timescales, and because of the time the application has taken to date and the financial pressures growing on the Applicants. Further, as the Applicants wished to sell, the more a sale was delayed, the more the marketing would fall within the off-season for marketing during the winter.
15. No motion was made for expenses by either party.

Findings in Fact

16. On 21 December 2022, the Applicants let the Property to the Respondent under a Private Residential Tenancy ("PRT") agreement with commencement on 23 December 2022 ("the Tenancy").
17. On 5 December 2023, the Applicants' letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicants wished to sell the Property.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 1 March 2024.
19. A copy of the Notice to Leave was served on the Respondent by email on 5 December 2023 in accordance with the terms of the Tenancy Agreement.

20. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 18 March 2024.
21. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon South Lanarkshire Council on 13 March 2024.
22. The Applicants have instructed Abode Estate Agency to act in marketing the Property.
23. The Applicants wish to sell the Property with vacant possession in early course. They wish to discontinue acting as landlords of the Property due to financial considerations, in particular the combined outgoings being close to the monthly rental amount.
24. The Applicants further wish to utilise their equity in the Property to fund their retirement.
25. Since issuing the Notice to Leave, the Applicants have additional reasons for wishing to sell due to the financial pressure upon them arising from the rent arrears; and due to the likelihood of being on a variable mortgage rate of 9% from December 2024.
26. The Respondent resides alone at the Property though his son resides with him at weekends.
27. The Respondent has been making active attempts to obtain alternative public sector accommodation but has thus far failed to obtain a new tenancy.
28. The Respondent has not yet received an offer of public housing.
29. The Property is close to the Respondent's son's usual address.
30. The Property is close to the Respondent's GP from whom he receives regular treatment for his mental health.
31. The Respondent was unable to work during a recent period due to poor mental health. Arrears of rent developed during this time.
32. The Respondent's health has now improved and he has returned to work.
33. As of 10 October 2024, the Respondent is in arrears of rent, for the period to 15 October 2024, of £6,071.25.
34. On 3 September 2024, a Sheriff Officer acting for the Tribunal intimated the CMD of 10 October 2024 upon the Respondent.

Reasons for Decision

35. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent notwithstanding his claim not to recall the Notice having been sent to him on 5 December 2023. In any case, he was clear that he did not extend a defence on that basis.
36. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1) *...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.*
37. The letter from Adobe Estate Agent constitutes meagre evidence under paragraph (3) but this was augmented by detailed submissions as to the intention to sell. On the basis of the submissions by the Applicants we agreed that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondent conceded that the material requirements of Ground 1 were satisfied.
38. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicants' reasons for wishing to sell, and they were not disputed by the Respondent. We further accepted it was reasonable to wish to sell given the financial issues created by the arrears, and the impending increase in mortgage rate. The Respondent's submissions on reasonableness raised significant issues but we were not satisfied that further evidence would assist. There was no material dispute on any issue, and we did not see what would be gained from a letter confirming the status of the Respondent's housing application (which, as we say, was not disputed).
39. We think it likely that the Respondent's re-housing will be considered more urgently if an eviction order is granted against him but do not base our Decision upon that. We were minded to grant the application on the undisputed facts, albeit with a suspension. The Applicants' reasons for seeking to sell were compelling, but the Respondent's arguments on reasonableness (such as the proximity of the Property to his son and his GP) were also compelling. The

Respondent was, however, satisfied to leave the Property if rehoused. In balancing the various interests, we held that granting the order but with a six-week suspension would:

- a. Bring finality to the application prior to the date of expiry of the Applicants' current fixed rate mortgage.
- b. Provide the Respondent with an order that would result in him being considered for, at least, rehousing under the homelessness legislation.
- c. Provide slightly more time for suitable public sector housing to become available, and thus restrict the chances that the Respondent may require to move into temporary accommodation prior to permanent rehousing.
- d. Provide the Respondent with slightly more time to move, given he has only recently returned to work, and continues to recover from a period of ill-health.

We did consider the Applicants' arguments against a suspension, and their submissions about ill-health and stress, but held that on balance this short suspension did not prejudice their position unduly.

40. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 22 November 2024.

Decision

41. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated above.

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.

J. Conn

10 October 2024

Legal Member/Chair

Date