



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/24/1680

Re: Property at Flat 0/2, 39 Dimity Street, Johnstone, PA5 8EN (“the Property”)

Parties:

Emily Irvine, 33 Anderson Road, Bishopton, PA7 5EW (“the Applicant”)

Alan Fullarton, Meghan Smith, Flat 0/2, 39 Dimity Street, Johnstone, PA5 8EN (“the Respondents”)

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 Applicant 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 Applicant to the Respondents commencing on 27 November 2020.
2. The application was dated 12 April 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 15 January 2024 and served upon the Respondents by recorded delivery 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 restated that the Applicant sought to sell and referred to an

attached letter of instruction from the Applicant. The application papers contained a handwritten letter from the Applicant to Penny Lane Homes dated 14 January 2024 evidencing an instruction to “start proceedings for the sale of” the Property. The Notice to Leave intimated that an application to the Tribunal would not be made before 11 April 2024.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Renfrewshire Council on 12 April 2024 was included in the application papers.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 September 2024 at 11:30. We were addressed by the Applicant’s agent, Kellie Deans, branch manager, Emmerson Homes, and by the Respondents. Both the Respondents provided submissions. (Ms Deans explained that Emmerson Homes was the new trading name of Penny Lane Homes in Johnstone, and that she was thus representing the same agent that the Applicant had used throughout the application.)
6. We sought confirmation from the Applicant’s agent that the application was still insisted upon, and sought confirmation from the Respondents as to their position. The Respondents made clear that they did not oppose eviction. We took both parties through the details of their respective positions.
7. In respect of the Applicant’s position:
 - a. She had owned two properties, both tenanted through Penny Lane Homes/ Emmerson Homes, but had sold the other earlier in the year and now sought to sell the Property as well.
 - b. The Applicant sought to sell both properties so as to realise the value of her investment and use the money towards her “pension”.
 - c. She was 74 and the two properties had always been part of her pension planning.
8. In regard to their position, the Respondents provided the following information:
 - a. They did not oppose eviction and were in contact with the local authority and local housing associations on rehousing.
 - b. They were hopeful that if they had an eviction order against them it would assist in their rehousing application.
 - c. They had a two-year old daughter and the first named Respondent’s 15-year old son stayed with them at weekends.
 - d. The Property was a two-bedroom flat and they hoped to be rehoused into a two- or three-bedroom property.
 - e. The Property was suitable for the second named Respondent to access, as she had medical conditions that made it difficult for her to use stairs.
9. We confirmed with the Respondents that they understood the implications of conceding eviction. They confirmed that they understood matters and were

satisfied to proceed with seeking rehousing, and thus did not oppose an eviction order.

10. No motion for expenses was made by either party.

Findings in Fact

11. On 17 November 2020, the Applicant let the Property to the Respondents under a Private Residential Tenancy agreement with commencement on 27 November 2020 ("the Tenancy").
12. The Property is the Respondents' only or main residence and the Tenancy is thus a Private Residential Tenancy ("PRT").
13. On or around 15 January 2024, the Applicant's letting agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that the Applicant wished to sell the Property.
14. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 11 April 2024.
15. Clause 4 of the Tenancy Agreement permitted service of a Notice to Leave by recorded delivery.
16. A copy of the Notice to Leave was served on the Respondents by recorded delivery on 15 January 2024.
17. The Applicant 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 12 April 2024.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Renfrewshire Council on 12 April 2024.
19. On or about 14 January 2024 the Applicant instructed her letting agent, then known as Penny Lane Homes, to act in a sale of the Property.
20. The Applicant wishes to sell the Property with vacant possession in early course so as to utilise any sale proceeds towards her living costs as a retired person.
21. The Applicant is 74 years old and has recently sold another property to utilise the sale proceeds towards her living costs.
22. The Applicant now has no other tenanted properties other than the Property.
23. The second named Respondent has mobility issues that make the Property especially suitable for her use as it is a ground floor property.

24. The Respondents have a two-year old daughter.
25. The first named Respondent's 15-year old son stays with the Respondents at weekends.
26. The Property is a two-bedroom flat.
27. The Respondents are making active attempts to obtain alternative accommodation but have thus far failed to obtain a new public sector tenancy.
28. On 16 August 2024, a Sheriff Officer acting for the Tribunal intimated the CMD of 17 September 2024 upon the Respondents.

Reasons for Decision

29. 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 Respondents.
30. 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.*
31. The letter from the Applicant to her letting agent constitutes sparse but sufficient evidence under paragraph (3), given the lack of opposition by the Respondents. On the basis of the submissions on behalf of the Applicant we agreed that paragraphs (2)(a) and (b) were also satisfied. In any event, the Respondents conceded that the material requirements of Ground 1 were satisfied.
32. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicant's reasons for wishing to sell, and they were not disputed by the Respondents. The Respondents' submissions on reasonableness raised significant issues given that eviction risked

homelessness to a young family, and given that the Property was suitable for their accessibility needs. We were obliged to the Respondents for their clear-minded approach to the application and we were satisfied as to their reasons for not seeking to oppose the application. Further we noted that the Property may not be entirely suitable for their needs given its size and the need, at least each weekend, to accommodate a family of four. In light of all the circumstances and the Respondents' lack of opposition, we were satisfied that the Applicant's reasons for seeking eviction were reasonable.

33. 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 in normal terms.

Decision

34. In all the circumstances, we grant an order against the Respondents 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.

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

17 September 2024

Legal Member/Chair

Date