



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/24/1478

Re: Property at Flat 3, 8A Windmill Road, Hamilton, ML3 6LX (“the Property”)

Parties:

Mrs Karen Fallow, 9 Wellmeadows Lane, Hamilton, ML3 8LS (“the Applicant”)

Mr Steven Woodward, Flat 3, 8A Windmill Road, Hamilton, ML3 6LX (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an eviction order.

- Background

By application dated 8 January 2024 (the Application), the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). With the Application, the Applicant, lodged the following:

- 1) Lease commencing on 24 May 2023;
- 2) Copy Notice to Leave dated 13 December 2023 along with sheriff officer execution of service;
- 3) Section 11 Notice; and
- 4) Copy Sole Selling Rights Agreement with MOMO Homes dated 24 March 2024.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 4 June 2024 to be heard by way of conference call to call and the Application served on the Respondent. At the CMD, the Applicant was represented

by a Mr Penny of Homes McKillop Solicitors and the Respondent appeared and represented himself. Following discussion and the CMD, a Direction was issued by the Tribunal in relation to the lodging of witness lists and documents by 5 August 2024. On behalf of the Applicant, a witness list and an inventory of productions was lodged on 5 August 2024. No documents or witness list were lodged on behalf of the Respondent. In addition, by email of 14 August 2024, on behalf of the Applicant, further documents were lodged albeit late and not in accordance with the terms of the Direction. A Hearing was fixed for 23 September 2024 to be heard by way of conference call and to deal with the identified issue in dispute, being:

- 1) Does the Applicant intend to sell the Property for market value or at least put it up for sale within 3 months in the event the Respondent vacates same?

At the Hearing, the Applicant was represented by a Mr McAdam of Homes McKillop Solicitors and the Respondent appeared and again represented himself. The Applicant's husband also appeared, ostensibly as a potential witness to give evidence.

- The Hearing

The Tribunal initially enquired of the Respondent, and he confirmed that he had no witness list nor productions that he intended to rely upon. The Tribunal thereafter enquired with Mr McAdam about the productions initiated by way of the email dated 14 August 2024 and he confirmed that the intention was to seek that those additional documents be allowed to be received albeit later. The Tribunal thereafter asked the Respondent about these late productions and whether he had any objection to them being received late. The Respondent indicated at this stage that it was not his intention to resist the Application any further and he was content to allow an eviction order to be granted. He explained that he no longer wished to live at the Property citing alleged issues of damp within the Property that meant he no longer wanted to stay there. He also confirmed that he had spoken to the relevant local authority about being re-housed, but that this could not be progressed whilst the Application was still in the dependence. He expressed that his main concern was having enough time to secure suitable accommodation after an eviction order was granted as, due to health issues, he did not feel he could go into a "homelessness unit" (although he thought 6 weeks may be enough). Standing this, the issue of the late productions was not developed further as the Respondent confirmed he no longer wanted to defend the Application.

The Hearing was adjourned for a short period to allow Mr McAdam to take instructions from the Applicant on the Respondent's position and, in particular, on the question of whether it was appropriate to delay enforcement of any eviction order for an additional period.

After the adjournment, the Respondent again confirmed that it was his position that he no longer wanted to defend the Application and that he wanted an eviction order to be granted. The Respondent confirmed that he was 51 years old and that he lived at the Property alone. He explained that, due to various health issues, he "was not allowed to work". He explained that he was epileptic, asthmatic and had had a "brain operation" 13 years ago and had not worked since. He explained that the rent was paid by way of state benefits. He also stated that whilst he accepted there had been

a history of arrears in his tenancy, as far as he knew, those arrears had been cleared due to a back dated claim and, if there were any arrears, that was down to the local authority. The Respondent thereafter confirmed there was nothing else he wished to say.

In response, Mr McAdam indicated that the Applicant primarily wished to sell the Property due to health concerns which had reduced her ability to continue working as a self-employed fitness instructor for the same number of hours she had previously. He referred to various productions (11 to 13) which showed the profits she made from her employment had reduced between 2021 and 2023. He also stated that the Applicant's husband had recently retired (he referred to production 14 to support that) and the plan had been to sell the Property to assist with that and release equity. There were also some liabilities for the Property that were ongoing and had been settled by the Applicant (reference was made to production 9). He flagged up the issue of rent arrears and explained that, whilst he did not know the current figure for any arrears, the rent statement lodged as production 10, showed arrears were £1345.16 in June 2024. Whilst the current position was not clear, the history of rent arrears (which was accepted) had added to the decision to sell the Property although not the primary reason. The Tribunal then heard from the Applicant's husband Mr Fallow who confirmed that it had always been their intention to sell the Property to help finance things when he retired. He also explained that the Applicant had had 2 replacement hips and this has reduced her ability to work as many hours as she had previously. He explained that he would not receive any payment from his pension until January 2025.

- Findings in Fact and Law

- 1) The Applicant and Respondent entered into a Private Residential Tenancy for the Property which commenced on 24 May 2023.
- 2) The Applicant is the heritable proprietor of the Property.
- 3) By Notice to Leave dated 13 December 2023 served by way of sheriff officers on 14 December 2023, the Applicant gave notice to the Respondent of her intention to recover possession of the Property in terms of Ground 1 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 9 March 2024.
- 4) The Notice to Leave was in the prescribed format.
- 5) That the Applicant is a self-employed fitness instructor.
- 6) That for health reasons the Applicant is unable to work as many hours as she did previously and has suffered a reduction in her income.
- 7) That the Applicant's husband is about to retire.
- 8) That the Applicant's husband will have no income until January 2025.
- 9) That the Applicant and her husband wish to release equity from the Property through its sale.
- 10) That the Applicant intends to sell the Property for market value or at least put it up for sale within 3 months of the Respondent vacating the Property.as his only or principal home for a period of at least 3 months following the Respondent vacating same.

- 11) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 1 of Schedule 3 has been made out.
- 12) That there has been a history of rent arrears during the Respondent's tenancy and rent arrears of £1,345.16 existed as at June 2024.
- 13) That the Respondent lives at the Property on his own.
- 14) That for health reasons the Respondent does not work.
- 15) That the rent for the Property is paid by way of state benefits.
- 16) That the Respondent no longer wishes to live in the Property.

- Reasons for Decision

The Applicant has complied with the notice requirements of the 2016 Act. Standing the terms of the supporting documents, the requirements of Ground 1 of Schedule 3 were also made out. The only issue remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. The Tribunal was advised that the primary reason for the desire to sell the Property was financial in that the Applicant had been unable to work as many hours as she had previously and had suffered a reduced income as a result. The Applicant's husband was also retiring, and they needed to sell the Property to realise the equity in same to help fund things. It was explained that, although not determinative, the history of rent arrears had contributed to that decision, but that it had always been the plan to sell the property to help fund things once Mr Fallow retired (he could not draw his pension until January 2025). Having heard both parties and having considered the relevant circumstances as outlined above, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. The Respondent made it clear that he no longer wished to dispute the basis of recovery and, despite his circumstances and issues with his health, did not wish to advance an argument that it was not reasonable to grant the order. Accordingly, the Applicant's household's financial circumstances and the Respondent's decision to not oppose the Application weighed in favour of the decision that it was reasonable to grant the order.

In addition, the Tribunal considered the question of whether or not to order a delay in the enforcement of the eviction order in terms of Rule 16A(d) of the Tribunal's rules of procedure. A delay in execution totalling 2 months was discussed. The Applicant indicated that he felt this would give him sufficient time to secure alternative accommodation and Mr McAdam indicated that the Applicant would be agreeable to such a delay in execution. The Tribunal therefore resolved to delay the enforcement of the eviction order for a total period of 2 months from the date of the order.

- Decision

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.

Rory Cowan

Legal Member/Chair

Date

23 September 2024