



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/24/0149

Re: Property at 52 Chriss Ave, Hamilton, ML3 7RN (“the Property”)

Parties:

Mrs Tanya Lennon, 33 Loancroft Gate, Uddingston, G71 7HN (“the Applicant”)

Miss Amanda Sinclair, 52 Chriss Ave, Hamilton, ML3 7RN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application included: -

- a. Tenancy agreement,
 - b. Notice to leave with evidence of service.
 - c. Section 11 Notice with evidence of service
3. The applicant's agent and respondent both appeared at the case management discussion on 28 May 2024. The applicant's agent advised that she was seeking an order for recovery of the possession of the property under ground 1 (intention to sell). The respondent advised that she was opposed to the order being granted. Reference is made to the case management discussion note. The case proceeded to a hearing.
4. Parties both submitted evidence in support of their position prior to the hearing. Medical records and Rightmove extracts were submitted by the applicant; and educational records were submitted by the respondent.
5. At the hearing on 7 October 2024 in attendance were the applicant with his agent, Mrs Murphy, from Igloo Estate Agents and the respondent. Both parties confirmed that they had received the additional paperwork submitted by the other party.

Hearing

6. The applicant confirmed that he was still seeking an order for eviction. His agent addressed 2 preliminary matters referred to in the case management discussion note. (1) they considered that there was the correct number of days provided in the notice to leave, between the date of the notice and the date when the action for eviction could be raised; and (2) in relation to evidence of the applicant's intention to sell. She advised that at this point there is nothing in writing to demonstrate that the applicant intends to sell the property, because they need the eviction order granted before they would instruct a valuation report. She advised that a surveyor had gone out to the property at the time of the case management discussion and had provided a verbal valuation of the

property to the landlord. She advised that her company, Igloo Estate Agents acted for the landlord. She confirmed that her firm had been instructed to market the property for sale once an eviction order is granted.

7. The applicant advised that he required to market the property for sale due to health reasons. His health was poor. He had had to retire. He wanted to put his affairs in order. He had provided evidence of his medical condition with the supplementary papers lodged. He advised that he needs to sell the property to obtain money to provide him with an income in his retirement. He has already had to sell the house he lives in to access money as he cannot afford to live there. He is downsizing to a one-bedroom house. He advised that he was a landlord by default. He previously bought and sold properties. He only rented this property out to the daughter of a friend after being approached by the respondent's father and he agreed on this occasion to rent the property out.
8. He had not increased the rent since 2019. Average rents for the same property were about £300-£400 more than he was getting. He had understood that the respondent was going to leave the property when an eviction was granted. It was thought she would get an offer from the council, but she required an eviction order to do so. He had been surprised when the respondent had then defended the action.
9. He advised that waiting to get the property back was having an impact on his mental health and causing him stress.
10. He confirmed that he has no other properties which he rents out.
11. His agent advised that there were other available private rental properties within the Hamilton area. She advised that similar properties to this property were renting out for in the region of £750 to £900 per month. The current property is therefore considerably under the normal rental value.

12. They had spoken to the respondent about moving and she had indicated she didn't wish to go to another private rental due to the high level of rent. The applicant's agent had submitted extracts from Rightmove showing average rents in the area are around about £750.
13. The landlord confirmed that he had looked at the educational information provided by the tenant, but this did not change his mind. He sought the eviction order, while he sympathised that the respondent's son has additional needs, he needs to make provision for his own family and himself.
14. The applicant thought that the tenant had family that she could possibly live with if the order were granted.
15. The respondent advised that she had no intention of going to stay with her mother. She advised that she is a 49-year-old woman with a child.
16. The respondent advised that she was opposed to the order being granted as she seeks a council house and not a private rental. She wanted to give her and her son a permanent place to stay.
17. The respondent advised that she is in a vulnerable financial situation, and she is also vulnerable due to her son's situation. The respondent advised that if the order is granted, she will have no place to live. She advised that she requires the council to make her an offer for a permanent home. She said she did not have the financial means to go into other private rented accommodation. She said this is the second time that she has had to leave private rented accommodation due to the landlord's intention to sell.
18. The respondent said she had had her name on the waiting list with the local authority since 2019. She said she would take houses in eight to nine different areas within Hamilton. She indicated she had not looked much at properties in the private market as she cannot afford them. It is just herself and her son who

require a property. The respondent advised the last time she spoke to the council was by telephone around the end of May 2024. She works in Hamilton. The council had advised her that if she were to be evicted, they would offer her temporary accommodation.

19. In relation to her financial situation, she advised that she receives benefits to assist her in the payment of rent and she receives maximum amount of £425 per month towards her rent and she has to put an additional £75 towards the rent. She did not think she would be entitled to any further money from housing benefit if she found other accommodation in the private sector.
20. She advised that her son does not need to stay in the house, but she does not want him to move to somewhere that is not safe and not permanent because he is quite vulnerable and would be very anxious by a move to somewhere unsafe. She advised that her son suffers from extreme anxiety.
21. In terms of what the respondent had done to secure other accommodation she indicated that it had really been the council that she had sought accommodation from. She advised that she had looked to other properties in the private sector however she cannot afford them.
22. She advised that she was sympathetic towards the applicant's medical situation however she has to protect the position of her son and herself.
23. She was asked by the applicant's agent if she had been advised by the council to go down the process of opposing the eviction order and she was advised yes, she had. She was asked would she agree to having a discussion with the letting agent to look at other available properties if the eviction order was granted. The agent advised that there is a bit of leeway in terms of not forcing any eviction order straight away to allow some time for the respondent to secure accommodation and if no accommodation is obtained from the council, then they would look at assisting the respondent to find other suitable

accommodation through the private rental sector. The respondent said she would be prepared to do this.

24. In conclusion the applicant advised that he requires an eviction order so he can get his own life in order and given his health situation he requires to do so as soon as possible. That the ongoing situation of no eviction order being granted is causing the landlord anxiety and stress.

25. The respondent advised that she wants to do the best she can for her son she did not wish to oppose the eviction order however she had nowhere to stay.

Findings in Fact

26. The Tribunal found the following facts established: -

27. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 7 October 2019.

28. The tenant was Amanda Sinclair.

29. The landlord was Tanya Lennon

30. The property is 52 Chriss Avenue, Hamilton.

31. There was submitted a notice to leave dated 14 July 2023, stating that an application would not be made until 13 October 2023. It sought eviction under ground 1 intention to sell.

32. The notice to leave had been served by sheriff officers on 19 July 2023. There was evidence of service.

33. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service of that notice.

34. The title deeds for the property show that the landlord was the owner of the property.

35. The applicant's agent confirmed that it was her firm that had been instructed by the landlord to sell the property when the tenant had left the property. There had been a valuation done and verbal advice given.
36. The landlord intended to sell the house.
37. The landlord's husband suffers poor ill health. He has had to retire from his job. The landlord is in the process of selling their home to downsize. They cannot afford the house they live in. They need to sell the property to use the money to live off. The landlord also wants to put their affairs in order and selling the property is part of that process.
38. The landlord has no other properties which they rent out.
39. The tenant has been in the property since 2019. The landlord had not increased the rent during that time.
40. The ongoing situation with being unable to sell the property was causing the landlord stress.
41. The tenant's 14-year-old son was being assessed as needing additional support at school. There was a referral to be made for CAHMS for this child. The child was anxious. The respondent did not want him to move to somewhere unsafe and not permanent as this would cause him anxiety.
42. The respondent wanted to secure permanent accommodation, she had had to leave her former private rental property due to that landlord wanting to sell the property.
43. The respondent had been on the council's waiting list for a number of years.
44. The respondent gets financial assistance to pay the rent.

Reasons for Decision

45. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in Schedule 3 of the Act applies.
46. The grounds which the Applicant seeks eviction under are grounds 1. Ground 1 is in the following terms: -

1 Landlord intends to sell.

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

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

(a) is entitled to sell the let property, [...] ³

(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] ⁴

(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.

47. The applicant and his agent appeared. The respondent appeared. The landlord owns the property and therefore is entitled to sell the property. The landlord provided evidence of their intention to sell the property. If the order is granted it appears to the tribunal the property will be sold. We find that the application meets the tests set out in ground 1.

48. The tribunal was then required to consider if it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction.

49. In deciding to grant the order for eviction we have considered and weighed up the different factors before us.

50. Factors, in favour of the order being granted are that :- the landlord suffers from poor ill health. His ill health appears to be significant. He requires to sell the property in order to provide him and his family with financial security during his retirement. His ill health has caused him to have to give up work. He has sold the house he lives in and has downsized. He advised he cannot afford to live in his current house. The landlord does not rent out any other properties. We note that there is no mortgage over this property and if it is sold it does appear that that will provide him with financial security. We consider that the landlord has been a good landlord to the respondent in relation to not increasing the rent since 2019.

51. In relation to issues of reasonableness in support of the respondent and the order not being granted:- we note that the respondent has already had to leave other private rented accommodation, and she is concerned about the lack of permanency if she has to move to new private rented accommodation. She indicated she cannot afford more expensive private rented accommodation. She is concerned that her son's anxiety means that she can only move to somewhere safe and permanent for him to live.

52. Against the respondent's circumstances, the tribunal considered that she had not made strenuous efforts to look at other options and appeared to wait only for the council to offer her a house on their waiting list. We were not certain that she had fully explored whether or not she may be entitled to other financial support from housing benefit if she managed to secure other more expensive privately rented accommodation.

53. Balancing all the factors, while we are sympathetic towards the respondent's situation given the poor health of the applicant, that he has had to retire, downsize for financial reasons, and requires the property to be sold in order to financially support him in his retirement; then we place more weight on the

factors pertaining to the applicant than we do on those pertaining to the respondent. We consider in all the circumstances it would be reasonable to grant an order for eviction.

54. Having regard to the matters set out above, the tribunal was prepared to grant the order for recovery of possession under ground 1.

Decision

55. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

M. Barbour

07 October 2024

Legal Member/Chair

Date