



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/24/2054

Re: Property at 209 Kintore Park, Glenrothes, KY7 6UR (“the Property”)

Parties:

Mr Thomas Johnstone, T/R, Hunterslea, Gillburn Road, Kilmacolm, Renfrewshire, G4 0UW (“the Applicant”)

Mr Matthew Jobson, 209 Kintore Park, Glenrothes, KY7 6UR (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”) which took place by telephone conference on 23 September 2024, the Applicant was not in attendance but was represented by Mr Richard Thomson of Smart Move Letting Management Limited. The Respondent was present with his full-time carer, Ms Claire Stone. The Respondent authorised Ms Stone to represent his interests at the CMD. The Respondent and Ms Stone were previously engaged. She lives with him at the Property.

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

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 28 June 2018.
- ii. On 10 January 2024, the Applicant’s letting agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 7 April 2024.
- iii. The Notice to Leave proceeds upon Grounds 1 and 1A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
- iv. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the outset of the CMD the Tribunal established that the Applicant still wished an eviction order to be granted.

At the CMD Mr Thomson made the following submissions for the Applicant:-

- i. The Applicant is seeking an eviction order.
- ii. Mr Thomson manages a number of properties for the Applicant. He previously managed seven properties but only three are left with him, the other four having been sold by the Applicant within the last 18 months.
- iii. Mr Thomson did not know if the Applicant owns other properties managed elsewhere.
- iv. The mortgage over the Property was due to expire at the start of 2024. Debt collectors are chasing the Applicant.
- v. The Tribunal referred to the letter of 23 January 2024 issued by the mortgage provider, Birmingham Midshires which refers to mortgage arrears of £3458.14 having accrued. Mr Thomson did not know why the mortgage arrears had accrued. He did not know the amount of the regular monthly mortgage payment.
- vi. The Tribunal referred to the letter from TLT, Solicitors, Glasgow dated 15 May 2024 which referred to a Calling Up Notice having been issued on 16 February 2024 and asked whether or not the mortgage arrears had been cleared. Mr Thomson replied "not to my knowledge". He did not know the current mortgage arrears figure.
- vii. With regard to the value of the Property, Mr Thomson stated that the Property had been valued in August 2023 at £115,000.
- viii. The Applicant had tried to sell the Property with the Respondent in occupation but that had been unsuccessful.
- ix. The Tribunal asked whether any court proceedings had been raised by the Applicant's mortgage provider relative to the Property and Mr Thomson replied "not so far".
- x. There are no other heritable securities over the Property.
- xi. In response to the Tribunal asking whether the Property could be re-mortgaged Mr Thomson indicated that the Applicant would not now be able to get a mortgage due to his age. He believed the Applicant to be in his late 70s. It would not be an option to extend the existing mortgage terms for the same reason.
- xii. Given that the capital due to be paid back to Birmingham Midshires to clear the mortgage is around £78,838.35 per Birmingham Midshires' letter of November 2023, Mr Thomson stated that the Applicant had been prepared to sell the Property at a discount if the Respondent could be left in occupation. Notwithstanding the previous valuation, there is no guarantee what the Property might achieve on sale on the open market.
- xiii. Mr Thomson referred to the Applicant having previously had other business interests including a door making company which "went under" around 3 to 4 years ago.
- xiv. The Applicant has no other resources to repay the capital of the mortgage.
- xv. Mr Thomson did not know the mortgages payable on the Applicant's other properties.
- xvi. Mr Thomson said the Applicant should be entitled to sell the Property.
- xvii. The Property is a mid-terraced property comprising four bedrooms, one of which is downstairs. There is also a downstairs toilet and an upstairs bathroom.
- xviii. The rent is paid up to date.
- xix. The rent is very low at £550 per month relative to the size of the Property. The Applicant has never increased the rent and could have done so earlier this year but he hoped to sell the Property and therefore there was no value in increasing the rent.

- xx. Mr Thomson said he believes the Applicant is in arrears with other mortgages payable.

At the CMD Ms Stone for the Respondent made the following submissions:-

- i. The Respondent and Ms Stone wish to leave the Property. They don't want to live there anymore as the Property is no longer suitable for the Respondent's needs.
- ii. They have been in touch with the local authority and have been speaking to a homeless manager there.
- iii. The Respondent needs a wet room and easy access in and out of a house.
- iv. A ground floor property is required.
- v. First contact was made with the local authority when the Notice to Leave was served.
- vi. The Respondent and Ms Stone have looked in the private sector but the rents are too expensive.
- vii. The Respondent is not working.
- viii. Ms Stone explained that around two and a half years ago the Respondent suffered an infection in his teeth which travelled to his brain. He required surgery and was left with severe left-sided weakness and brain damage.
- ix. The Respondent is in receipt of state benefits.
- x. The Respondent and Ms Stone have a 12-year-old son who stays with them. He is at school. Ms Stone also has an 18-year-old daughter who lives with her and the Respondent. She is at college.
- xi. Ms Stone confirmed that an occupational therapy assessment has been undertaken.
- xii. They have accrued 175 points in terms of priority with the local authority.
- xiii. They are hoping to stay in the area.
- xiv. The local authority housing application that they have filled in also includes options for housing associations and therefore they are prepared to consider such properties too.

Findings in Fact

The Tribunal makes the following findings-in-fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Property is a mid-terraced property comprising four bedrooms, one of which is downstairs. There is also a downstairs toilet and an upstairs bathroom.
- iii. The Applicant leased the Property to the Respondent in terms of the PRT that commenced on 28 June 2018.
- iv. On 10 January 2024, the Applicant's letting agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 7 April 2024.
- v. The Notice to Leave proceeds upon Grounds 1 and 1A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. A letter of 23 January 2024 issued by the mortgage provider, Birmingham Midshires, refers to mortgage arrears of £3,458.14 having accrued at that time.
- vii. A letter from TLT, Solicitors, Glasgow dated 15 May 2024 refers to a Calling Up Notice having been issued on 16 February 2024.
- viii. The Property had been valued in August 2023 at £115,000.
- ix. The Applicant had tried to sell the Property with the Respondent in occupation without success.
- x. There are no other heritable securities over the Property.

- xi. The Applicant cannot now remortgage the Property due to his age. The Applicant is in his late 70s. It is not possible to extend the existing mortgage terms for the same reason.
- xii. The capital now due to be paid back to Birmingham Midshires to clear the mortgage is around £78,838.35 per Birmingham Midshires' letter of November 2023.
- xiii. The Applicant has no other resources to repay the capital of the mortgage.
- xiv. The Property is a mid-terraced property comprising four bedrooms, one of which is downstairs. There is also a downstairs toilet and an upstairs bathroom.
- xv. The rent is paid up to date.
- xvi. The Applicant has never increased the rent payable under the PRT.
- xvii. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- xviii. The Property is no longer suitable for the Respondent's needs.
- xix. The Respondent needs a wet room and easy access in and out of a house.
- xx. A ground floor property is required.
- xxi. First contact was made with the local authority when the Notice to Leave was served.
- xxii. The Respondent and Ms Stone have been in touch with the local authority and have been speaking to a homeless manager there relative to alternative accommodation.
- xxiii. The Respondent and Ms Stone have looked in the private sector but the rents are too expensive.
- xxiv. The Respondent is not working. Ms Stone is his full-time carer and lives with him.
- xxv. Around two and a half years ago the Respondent suffered an infection in his teeth which travelled to his brain. He required surgery and was left with severe left-sided weakness and brain damage.
- xxvi. The Respondent is in receipt of state benefits.
- xxvii. The Respondent and Ms Stone have a 12-year-old son who stays with them. He is at school. Ms Stone also has an 18-year-old daughter who lives with her and the Respondent. She is at college.
- xxviii. The local authority housing application that they have filled in also includes options for housing associations and therefore they are prepared to consider such properties too.

Reasons for Decision

There were no disputed factual matters between the parties.

The application proceeds upon Grounds 1 and 1A of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(1) It is an eviction ground that 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."*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon correspondence from the Applicant's mortgage provider, Birmingham Midshires, and their solicitors. The Tribunal accepts this documentation as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account the following:-

- i. From the limited information available, the Applicant's finances appear strained and the Tribunal cannot compel him to continue the tenancy where to do so would be to his financial detriment.
- ii. The Respondent offered no real challenge to an eviction order being granted and indeed he and Ms Stone have taken appropriate steps to secure alternative accommodation in the public sector which would be more suitable for the Respondent's needs.

On that basis the Tribunal considered it reasonable to grant an eviction order.

The Tribunal did not therefore need to consider an eviction order on Ground 1A.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.

G Buchanan

Legal Member/Chair

23 September 2024

Date

