



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/0470

Re: Property at 35 Willowpark Court, Airdrie, North Lanarkshire, ML6 0DS (“the Property”)

Parties:

Mr Stuart MacPherson, 26 Sheil Lane, East Calder, West Lothian, EH53 0FB (“the Applicant”)

Miss Danielle Morrison, 35 Willowpark Court, Airdrie, North Lanarkshire, ML6 0DS (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent. The tribunal delayed execution of the order until 13 January 2025.

1. An application was received from the Applicant on 30 January 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of the property under Ground 1 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy Notice to Leave dated 30 November 2023 citing ground 1, and stating the date before which proceedings could not be raised to be 13 January 2024.
 - (ii) Evidence of service of the Notice to Leave on the Respondent by email dated 16 October 2023.

- (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council, with proof of sending by email on 22 January 2024
 - (iv) Copy sales agreement with Let Property Sales Limited regarding the sale of the house, together with link to the property on the Rightmove website.
3. The application was accepted on 26 February 2024.
 4. A case management discussion (CMD) was held on 11 June 2024, at which both parties were present. The tribunal heard some evidence from the parties regarding their circumstances. The tribunal noted that the parties had originally entered into a short assured tenancy agreement, which was later changed to a private residential tenancy agreement. Neither agreement had been submitted with the application. The tribunal therefore continued the application to allow for both tenancy agreements to be lodged by the Applicant, so that the tribunal could consider which agreement was currently effective to ensure that the correct notices had been served. This would then allow the tribunal to consider reasonableness.
 5. The tribunal issued a direction to the Applicant on 11 June 2024 requiring him to provide a copy of both tenancy agreements at least 14 days before the next CMD. Copies of both tenancy agreements were received from the Applicant on 11 June 2024.
 6. The adjourned CMD was arranged for 29 October 2024.

The case management discussion

7. A CMD was held by teleconference call on 29 October 2024. The Applicant was present on the teleconference call and represented himself. The Respondent was also present on the teleconference call and represented herself.

The Applicant's submissions

8. The Applicant asked the tribunal to grant an eviction order under ground 1. It had been more than a year since he sent the Notice to Leave to the Respondent. He had a good relationship with the Respondent, who had been a good tenant. He had reduced the rent when she had been struggling and had kept it low. He had been trying to sell the property through a company which sells to investment buyers, in order to keep the Respondent in her tenancy. The issue was that the rent she was paying was low, and this had made it less attractive to potential buy to let landlords. He had received offers from such buyers, but these were at around 30% below market value, and he was unable to sell it at such a low price.

9. He had intended to use the sale proceeds to pay off the remainder of his own mortgage. He had hoped to do this before he had to remortgage his own home in July 2024, but this had not been possible due to the ongoing tribunal proceedings. The property was now costing him money as he was now paying a higher rate on his own mortgage and also had to pay for repairs and maintenance of the property. He now wanted to get the property back so that he could sell it to a residential buyer at a more realistic price. There had been interest from some such buyers but he was unable to consider offers while the Respondent was still living in the property.
10. The Applicant understood the difficulties that the Respondent faced, but felt that he now needed to get the property back so that he could move on with his life. He noted that the Respondent needed to move on too.
11. The property is the Applicant's only rental property. He previously had two other rental properties but had sold these around four years ago.

The Respondent's submissions

12. The Respondent said that she did not wish to oppose the application. She said that she understood that the Applicant had to sell the property, and had tried to keep her there. She had been in touch with North Lanarkshire Council, and had been on the housing list for over a year, but had not been offered any properties so far. She had also contacted her local councillors and MP, and felt she was out of options. The council had told her to get in touch as soon as she received an eviction order.
13. She felt that staying in the property longer meant that she could not get a council house, but she was worried that she and her son would be made homeless. She suffers from mental health issues and experienced a close family bereavement in April 2024. The uncertainty over her housing situation over the past year has been making her mental health issues worse.
14. The Applicant is 30 years old and is a single parent. Her son is not yet at nursery. She had to give up her job to care for him. She has lived in the property for 10 years. She has nowhere else to go. While her family live in the area, she cannot live with her mother as she has a one bedroom flat. She wishes to remain in the local area, and would ideally like a two bedroom house with a garden, given her mental health issues and her son's needs.

Findings in fact

15. The tribunal made the following findings in fact:

- The Applicant owns the property.
- The Applicant is the registered landlord for the property.
- There was previously a short assured tenancy in place between the parties which commenced on 8 November 2014.
- There is now a private residential tenancy in place between the parties, which commenced on 19 August 2019 and was signed digitally by both parties on 13 August 2019.
- Both parties consider the short assured tenancy to have been superseded by the private residential tenancy agreement.
- The Notice to Leave was validly served by the Applicant on the Respondent by email on 16 October 2023.
- The property is currently on the market as an investment opportunity with the tenant in situ.
- The Applicant intends to sell the property or put it up for sale as a vacant property within 3 months of the Respondent ceasing to occupy it.
- At the time of the application, the rent payable under the tenancy agreement was £475 per month. The Applicant had reduced it from £484 per month to assist the Respondent. The rent has now been increased to around £515 per month from August 2024.
- The Respondent lives in the property with her 2 year old son.
- The Respondent is not currently employed as she a single parent and is caring for her son.
- The Respondent's family members are also resident in the Airdrie area.

Reasons for decision

16. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
17. The tribunal firstly considered whether the legal requirements of ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

Landlord intends to sell

- 1(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, and*

(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.

18. The tribunal determined that as the owner of the property, the Applicant is entitled to sell it. The tribunal noted that the property has in fact been on the market for some time and remains so, as an investment opportunity with the tenant in situ. The Applicant confirmed that as soon as the property was vacant, he intended to sell it to residential buyers. On the basis of this evidence, the tribunal was satisfied 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 ceasing to occupy it.
19. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
20. The tribunal noted that the Applicant has been trying to sell the property and keep the Respondent in place, but this has not been possible without selling the property at a price significantly lower than its market value. He has been a reasonable landlord and has kept the rent low to make it affordable for the Respondent.
21. He is now losing money on the property as he is now paying a higher rate on his own mortgage and also has to pay for repairs and maintenance of the property. He therefore needs to sell the property with vacant possession at a price closer to its market value. He does not currently have any other rental properties.
22. The tribunal noted that the Respondent did not wish to oppose the application. She has been in the property for ten years and has been a good tenant. She does not want to leave the property and is not currently in a financial position to find another private rented property in the local area. She accepts, however,

that the Applicant requires to sell the property, and that she needs to find a more stable home for herself and her son. She is concerned that she and her son may become homeless if evicted, but also understands that the longer she stays in the property the longer it will take for the council to offer her alternative accommodation.

23. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondent did not wish to oppose the application, and that obtaining an eviction order would assist her with her application to the local authority for permanent accommodation. The tribunal considers that once an eviction order has been granted, the council will move her from the general housing waiting list on to a homeless priority list and will therefore be in a better position to find her alternative accommodation at an earlier date.
24. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.
25. Before deciding to grant the order, the tribunal sought the views of both parties on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, to give the Respondent more time to find a new property. The Applicant said that he was happy to allow the Respondent to stay in the property until after Christmas, but would like the property back by mid-January. The Respondent said that this would make things easier for her, as she did not want to be homeless over the Christmas period.

Decision

The tribunal granted an order in favour of the Applicant against the Respondent for recovery of possession of the property. The tribunal delayed execution of the order until 13 January 2025.

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.

S. O'Neill

Legal Member/Chair

29 October 2024

Date