



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/24/0644

Re: Property at 10 Waterloo Road, Prestwick, KA9 2AA (“the Property”)

Parties:

Mr Alistair Brown, Mrs Mary Brown, 87 Belmont Avenue, Ayr, KA7 2NE (“the Applicants”)

Ms Pam Aulak, 10 Waterloo Road, Prestwick, KA9 2AA (“the Respondent”)

Tribunal Members:

Sarah O’Neill (Legal Member) and Eileen Shand (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 Applicants against the Respondent. The Tribunal delayed execution of the order until 22 January 2025.

Background

1. An application was received from the Applicants’ representative on 8 February 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). The application sought recovery of the property under Ground 3 as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form in respect of the application were:
 - (i) Copy private residential tenancy agreement between the parties, which commenced on 20 April 2023.

- (ii) Copy Notice to Leave dated 15 September 2023 citing ground 3, and stating the date before which proceedings could not be raised to be 10 December 2023.
 - (iii) Proof of sending of the Notice to Leave to the Respondent by email dated 15 September 2023.
 - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to South Ayrshire Council, together with proof of sending by email.
 - (v) Authorisation signed by both Applicants on 21 August 2023 authorising Ayr Estate and Letting Agents to act on their behalf.
3. Further to a request from the Tribunal administration, further information was received from the Applicant' representative on 21 March 2024. This included an estimate dated 18 March 2024 from HeatAyr Gas Services for refurbishment works to be carried out within the bathroom at the property.
 4. The application was accepted on 18 April 2024.
 5. The Tribunal issued a direction to the Applicants on 7 August 2024 directing them to provide further evidence to support the ground under which the eviction order was sought. Two emails were received in response from the Applicants' representative on 15 August 2024.
 6. An email was received from the Respondent's representative on 15 August 2024 enclosing written submissions in response to the application.
 7. A case management discussion (CMD) took place by teleconference call on 27 August 2024. The Appellants were represented by Mr Alan Lavelle of Ayr Estate and Letting Agents. The Respondent was represented by Mr David Anderson of Ayr Housing Aid Centre.
 8. Having heard from both parties, the Tribunal decided that it required to see further information from the parties. In particular, it wished to see further information regarding the proposed refurbishment of the bathroom, as well as a second Notice to Leave which Mr Lavelle said had been issued to the Respondent stating ground 1 on 22 March 2024, and which had expired on 15 June 2024. The Tribunal therefore decided to adjourn the matter to another CMD to allow time for this information to be submitted to the Tribunal.
 9. The Tribunal issued a further direction to the parties on 29 August 2024. Among other things, the Tribunal directed the Applicants to submit the second Notice to Leave dated 22 March 2024, together with evidence that this was sent to the Respondent. The Appellants were invited, should they wish to seek the tribunal's permission to amend the application to add ground 1, to request this in writing. The Applicants were also invited to submit further written representations relating to ground 3, together with any relevant

supporting evidence, such as any specialist damp report which they had commissioned.

10. The adjourned CMD was scheduled for 5 November 2024. Further written representations were received from Mr Lavelle on 13 September 2024, enclosing; 1) the second Notice to Leave with proof of sending and 2) a survey inspection report from Kerelaw Building Preservation, timber and damp treatment specialists, in respect of the property, dated 3 September 2024 (“the Kerelaw report”). No further representations were received from Mr Anderson in advance of the CMD.

The case management discussion

11. The adjourned CMD was held by teleconference call on 5 November 2024. The Appellants were represented by Mr Lavelle and the Respondent was represented by Mr Anderson.

Submissions on behalf of the Applicants

12. Mr Lavelle asked the Tribunal to grant an eviction order to the Applicants under ground 3 (landlord intends to refurbish) only. Extensive works were required in the bathroom and potentially elsewhere in the property. He pointed to the Kerelaw report, which had found extensive structural decay in the bathroom sub-floor and a complete collapse of localised sub-floor joist timbers below the WC area. The report recommended the removal of the entire bathroom suite and uplifting of the bathroom floor, cutting away of the wall between the bathroom and the adjacent bedroom wall to be cut up 1 metre high to inspect the timber frame runners and partition structure including cutting back flooring within the bedroom 1 metre back to allow inspection of joist timbers extending from the bathroom into the adjoining bedroom.
13. The report stated that the full extent of the decay could only be established when the area is fully exposed, and that it may be necessary to extend the exposure work depending upon the nature of decay and findings within the area initially exposed.
14. Mr Lavelle said that the Applicants were keen to begin the necessary repair works as soon as possible, before the situation worsened. They had now decided that once the tenant had moved out, they would carry out the required works and then put the property up for sale.
15. Mr Lavelle told the Tribunal that the Applicants completely understood the Respondent’s situation and had considered other options. This was the only rental property they owned, and they therefore had no alternative properties that they could offer the Respondent. It was not realistic for the Respondent

and her family to remain in the property while the works were carried out, as there was only one bathroom in the property.

Submissions on behalf of the Respondent

16. Mr Anderson indicated that he did not oppose the application. He said that the Respondent accepted that she would have to move out of the property, but first she needed to find somewhere else to live.
17. He said that at the previous CMD, he had opposed the application on the grounds of reasonableness, questioning the extent of the required works based on the original information and costings in the HeatAyr Gas Services estimate. Having now seen the photographs in the Kerelaw report, and having been present at the property himself when the WC was removed, it was clear that the works required were extensive and the likely costs (£1250 plus VAT for the initial exposure works plus a minimum contingency sum of £8500 plus VAT) were substantial.
18. There was only one bathroom in the property and it appeared that the dampness may have spread to the bedroom next door and possibly also the living room. He noted that the living room and kitchen were in one open plan space, which could potentially mean that there would be no cooking facilities while the works were ongoing. It was not practical or safe for the Respondent and her family to remain in the property while the works were ongoing.
19. Mr Anderson said that he was doing everything he could to get the Respondent and her family rehoused as soon as possible. He had been in contact with South Ayrshire Council, which was minded to find the Respondent a property. She was currently waiting for the Council to offer her accommodation. The Council had made her an offer of accommodation around 6-7 weeks ago but she had to turn this down, as it was a third floor flat which was not suitable for her health needs. The Respondent had also made applications to local housing associations.
20. On top of everything else, the Respondent had recently been served with divorce papers by her estranged husband. She needed a bit more time to find alternative accommodation. Mr Anderson asked that the Tribunal, if it were to grant an order, delay execution until at least the end of January 2025.

Findings in fact

21. The Tribunal made the following findings in fact:
 - The Applicants own the property and are the joint registered landlords for the property.

- There is a private residential tenancy in place between the parties, which commenced on 20 April 2023. The Respondent had, however, been living in the property since 20 April 2019.
- The Notice to Leave was validly served on the Respondent by email on 15 September 2023.
- The Respondent is currently living in the property with her four children, who were aged between 11 and 19 at the time of the first CMD.
- The Respondent suffered a brain haemorrhage in April 2023. She suffers from various mental and other health issues.
- Extensive repairs are required to the bathroom and potentially other neighbouring rooms within the property due to damp-related decay.
- The property is a three bedroomed semi-detached house which has only one bathroom and no separate WC.
- The Applicants do not rent out any other properties.

Reasons for decision

22. 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. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

23. The Tribunal firstly considered whether the legal requirements of ground 3, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 3 states:

Landlord intends to refurbish

3 (1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2) The First-tier Tribunal may find that the eviction ground named by subparagraph (1) applies if—

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) 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)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.

24. Having had regard to all of the evidence before it, including the Kerelaw report, the Tribunal was satisfied that the Applicants intend to carry out significantly disruptive works to the property, and that they are entitled to do so. This was not disputed by Mr Anderson.
25. The Tribunal also took the view that it would be impracticable for the Respondent and her family to continue to occupy the property given the nature of the refurbishment intended by the Applicants. This was accepted by Mr Anderson.
26. The Tribunal then carefully considered whether it was reasonable to issue an eviction order in all of the circumstances of the case.
27. The Tribunal noted that the current situation was very difficult for both parties. The Applicants were keen to get the property back as soon as possible in order to carry out the works required before the property deteriorated further. The Applicants were sympathetic to the Respondent's circumstances, but did not own any other rented properties which they could offer to her.
28. The Respondent is a single parent with four children and significant health issues. She is also now dealing with divorce proceedings. Given the extent of the works, however, it was not realistic for the Respondent to remain in the property while these were being carried out. There are five people living in the property and there is no alternative bathroom or WC which they could use. The work was likely to extend to the neighbouring bedroom and possibly also into the living room, depending on the extent of the dampness and decay. Some existing safety issues in connection with sharp broken tiles had already been identified in the Kerelaw report. The longer the work was left, the property would fall into even greater disrepair and could be more unsafe.
29. The Respondent did not wish to oppose the application and accepted that she would have to leave the property, once she had found somewhere else to go. It seemed likely that the Council would be able to rehouse her and her family soon, having already made her one offer of accommodation.

30. Having carefully considered 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. The Tribunal gave particular weight to the evidence before it that, as agreed by both parties, extensive works are required within the property and that the Respondent and her family could not remain in the property while this work was ongoing.
31. 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, given the upcoming Christmas period and to give the Respondent further time to find a new home.
32. Mr Lavelle said that the Applicants would have no objection to extending the time into the new year, but asked the Tribunal not to extend this for too long, to avoid the property getting into a worse state.
33. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant. The Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order until after the festive period, and to allow the Respondent further time to find alternative accommodation.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delays execution of the order until 22 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.

Sarah O'Neill

5 November 2024

Legal Member/Chair

Date