



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section
Chamber Ref: FTS/HPC/EV/24/2126**

Re: Property at 33 Kirkdene Avenue, Newton Mearns, Glasgow, G77 5RN (“the Property”)

Parties:

**Mr Andrew McCance, 48 London Road, The Oast, Tonbridge, Kent, TN10 3DH
 (“the Applicant”)**

**Mr Hussain Ahmad, Mrs Kinza Hashmi, 33 Kirkdene Avenue, Newton Mearns,
Glasgow, G77 5RN (“the Respondent”)**

Tribunal Members:

Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted but that execution of the order should be postponed to 7 February 2025.

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to live in the Property and for eviction and recovery of possession on Ground 1 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 9 May 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 7 May 2020;
3. Notice to Leave dated and served by email on 20 October 2023;
4. Section 11 Notice to Local Authority;
5. Email dated 9 May 2024 to Local Authority serving Section 11 Notice;
6. Affidavit of Applicant dated 23 August 2024;
7. Terms of engagement with estate agents dated 27 October 2023;
8. Respondent’s GP Letter dated 23 October 2024;

9. Respondent's Credit Report dated 2 February 2024.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 6 November 2024. The Applicant participated and was represented by his solicitor. The Respondents participated and represented themselves.

The Respondents' position

The Respondents did not seek to oppose the order for recovery of possession but due to their personal circumstances sought further time to obtain alternate accommodation. They had been in contact with the local housing department and had been searching the private rented market without success. The Respondents have 4 children who live with them in the Property aged 4, 9, 14 and 18. The 3 youngest children all attend school/nursery in the locality. Dr Ahmad works as a Psychiatrist and has mental health issues (anxiety and depression). The Respondents referred to the Experian Credit Report showing that Dr Ahmad has a "very poor" credit rating. This coupled with the family size has proved an obstacle in obtaining suitable alternate accommodation.

Mrs Hashmi confirmed that she was in touch with the local authority and was to go back to them after the outcome of the Tribunal was known.

The Respondents did not oppose the application but did seek time to obtain alternative accommodation.

The Applicant's position

The Applicant's position was that he no longer wished to be a landlord in Scotland. He had a number of Properties in England which were used for family. The Property in Scotland was managed by his Letting Agents. He was nearing retirement and the mortgage over the Property was coming to the end of its term. Due to his age (68) he had been told that he would have difficulties obtaining a remortgage. His mortgage costs on his Properties were increasing and the sale of this Property would reduce his mortgage liability.

The Applicant produced an affidavit which set out his Properties, financial liabilities. And personal circumstances.

Decision and Reasons

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 1 which are in the following terms:

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,

(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 Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 7 May 2020;
2. The Applicant is the owner of the Property and intends to sell the let property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it;
3. Notice to Leave had been served on the Respondents on 20 October 2023;
4. Section 11 notification had been served on the local authority by email on 9 May 2024;
5. The Respondents are experiencing difficulties in sourcing alternate accommodation despite making all reasonable attempts to do so;
6. The Respondents are in touch with the local authority who are aware of the Tribunal proceedings;
7. Dr Ahmad suffers from anxiety and depression;
8. The Respondents have 4 children in the Property aged 4, 9, 14 and 18. 3 of them attend local school/nursery;
9. The Applicant needs to sell the Property due to increased mortgage costs, issues with remortgaging due to his age, the need to reduce his overall mortgage liability and his desire not to be a landlord in Scotland;
10. The Applicant (together with his wife) does own other Properties in England which are let to family members and have mortgages over them.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that the Applicant clearly needed to sell the Property due to his financial and personal circumstances. The Tribunal were also satisfied that the Respondents were trying but having difficulties in sourcing alternate accommodation. Granting the order would occasion further stress, anxiety and disruption to the Respondents and their children.

The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order but to postpone execution

of the order to 7 February 2025 under Rule 16A of the Tribunal Procedure Rules. This would allow the Respondents further time to source alternate accommodation and to pursue local authority housing as a priority. This would also afford the Applicant certainty as to when he would recover possession of the Property and be able to market and sell it.

The Tribunal did not require to hear any further evidence.

The Tribunal was satisfied that Ground 1 had been established and accordingly granted the application for eviction and recovery of possession.

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.

Alan Strain

6 November 2024

Legal Member/Chair

Date