



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/2903

Re: Property at 29 Edmond Gardens, Kingswells, Aberdeen, AB15 8PL (“the Property”)

Parties:

Mr Brian Ewen, 6 Mitchell Gardens, Kinellar, Aberdeen, AB21 0XQ (“the Applicant”)

Mr Emmanuel Okoye, 29 Edmond Gardens, Kingswells, Aberdeen, AB15 8PL (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 29 Edmond Gardens, Kingswells, Aberdeen, AB15 8PL under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application is based

on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. The application was accompanied by a Private Residential Tenancy Agreement dated 13 January 2019, a Notice to Leave dated 27 February 2024 with email addressed to the Respondent dated 27 February 2024, a signed letter of terms of engagement in connection with the sale of the Property between the Applicant and Storie, Cruden and Simpson, solicitors and estate agents and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with email to Aberdeen City Council dated 25 June 2024.
3. On 11 October 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 15 November 2024. The Respondent required to lodge written submissions by 1 November 2024. This paperwork was served on the Respondent by Roger Ewen, Sheriff Officer, Aberdeen on 11 October 2024 and the Execution of Service was received by the Tribunal administration.
4. On 1 November 2024 the Respondent lodged written submissions with an Inventory of Productions comprising photographs and emails relating to mould, the annual gas servicing and access, the heating and hot water not working, a roof leak and water damage assessment dated from 30 October 2022 -10 October 2024 and an email dated 9 April 2023 from the Applicant to the Respondent regarding ending the tenancy. The Respondent also lodged a second Inventory of Productions comprising photographs and emails relating to water damage assessment from 18 September – 27 October 2024.
5. On 13 November 2024 the Applicant’s solicitor lodged an email dated 12 November 2024 from the Applicant with receipts relating to roof repairs, a replacement roof and handyman repairs.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 15 November 2024 by way of teleconference. Mr Paterson from Storie Cruden and Simpson appeared on behalf of the Applicant. The Applicant was also in attendance. The Respondent appeared on his own behalf.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 13 January 2019, the Notice to Leave dated 27 February 2024 with email addressed to the Respondent dated 27 February 2024, the signed letter of terms of engagement in connection with the sale of the Property between the Applicant and Storie Cruden and Simpson, solicitors and estate agents, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with

email to Aberdeen City Council dated 25 June 2024, both of the Respondent's Inventories of Productions comprising photographs and emails relating to mould, the annual gas servicing and access, the heating and hot water not working, a roof leak and water damage assessment dated from 30 October 2022 -27 October 2024 and the email dated 9 April 2023 from the Applicant to the Respondent regarding ending the tenancy, the email dated 12 November 2024 from the Applicant with receipts for roof repairs, a replacement roof and handyman repairs. The Tribunal noted the terms of these documents.

8. Mr Paterson submitted that the Applicant was seeking an order to evict as the Applicant wanted to sell the Property. With reference to the email lodged by the Respondent he submitted the Applicant had first advised the Respondent on 9 April 2023 that he was intending to end the tenancy and put the Property up for sale. He submitted that the Applicant was coming up to retirement. However, in June 2023 the Applicant was diagnosed with cancer. Since then he has undergone life saving surgery, chemotherapy and radiotherapy, is still undergoing treatment and is due to get further scans. The Applicant wanted to reduce stress in his life. He wanted to sell the Property for health reasons. He has every intention of selling the Property as he wants to put his financial affairs in order. As the Applicant had not been able to put the Property up for sale in the summer after the Notice to Leave expired, the Applicant has had to remortgage in September 2024 as a result of which he is on a fixed rate mortgage paying £173 per month more than under his previous mortgage. He no longer wants to be a landlord.
9. Mr Paterson explained the Applicant had consulted them regarding the sale of the Property and ending the tenancy in February 2024. They served the Notice to Leave on 27 February 2024. He explained the Respondent made it clear he was not willing to vacate the Property. Arrears were £1042 in April 2024 and have now increased to £2780. After the Respondent did not vacate Mr Paterson submitted the relationship between the Applicant and the Respondent was not great. In response to the Respondent's written submissions, Mr Paterson submitted the Applicant spent £30 000 on replacing the roof and dealt with any faults when notified.
10. He understood the Respondent was a single man with no health issues or vulnerabilities. There were other rental properties in the area, but he was not aware that the Respondent was looking at other properties.
11. Finally, Mr Paterson submitted the Applicant had met the statutory requirements in relation to the ground of repossession. It was the Applicant's intention to sell and he had made it clear that he was doing so due to health

reasons. His firm had been instructed to act as quickly as possible to market the Property.

12. Mr Ewen asked to address the Tribunal, which the Tribunal allowed. He explained he has ongoing health issues and is due another scan before the end of the year. He has had life saving surgery. He is 60 years of age.
13. The Tribunal invited Mr Okoye to state what his position was. He referred the Tribunal to his written submissions and stated that there were still outstanding repairs that needed to be carried out to the Property. Mr Okoye explained he had started to complain about repairs to the Property in 2022. He referred to the emails and photographs lodged, On 9 April 2023 he received an email from Mr Ewen that he was terminating the tenancy agreement on 31 May 2023 and that he intended to sell the Property. Mr Okoye submitted that this was insufficient notice. He submitted the only reason the Applicant wanted to evict him from the Property was because he had complained about repairs. He submitted the Applicant was being vexatious towards him. At the time of this email Mr Ewen had not been diagnosed with cancer, but did nothing more to terminate the tenancy until this February 2024. Mr Okoye submitted that demonstrated that Mr Ewen had no intention of selling the Property. The Tribunal reminded Mr Okoye that the Applicant had been diagnosed with cancer in June 2023 and had undergone lifesaving surgery, chemotherapy and radiotherapy.
14. Mr Okoye advised the Tribunal that even after the service of the Notice to Leave on 27 February 2024, there have been no surveyors at the Property to value it, he had not seen a Home Report and there had been no viewings. The Tribunal referred Mr Okoye to the wording of Ground 1 of Schedule 3 of the 2016 Act with regards to the fact the ground states that the landlord 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 the property. The Tribunal pointed out that there was no need for any landlord relying on this ground to put a property on the market until 3 months after it had been vacated at the latest.
15. Mr Okoye explained he had not had a chance to consider the Applicant's email of 12 November 2024 and the documents lodged with it. As he had only received them the day before. The Tribunal went through these with Mr Okoye. The email referred to the email of 9 April 2023 to which Mr Okoye had already referred, the cancer diagnosis and the repairs to the Property. The Tribunal made it clear to both parties that it was not relevant to the case before it as to whether repairs had been carried out and if so whether they had been carried out satisfactorily.

16. Mr Okoye went on to explain that contrary to what Mr Paterson had said, he had viewed properties to rent in Aberdeen. He had viewed a few properties in the area but that there was not much to view. He was still looking for alternative accommodation. When questioned by the Tribunal as to whether he had sought advice and assistance from the Homeless Team at Aberdeen City Council, he advised he had not.
17. Mr Okoye again stated that there were still outstanding repairs to the Property and that these would have to be carried out before the Property went on the market which demonstrated that the Applicant had no intention of selling the Property and queried how was he supposed to believe Mr Ewen. He explained that he had been to the Council to complain about the repairs and had raised a repairing standard application with the Housing Tribunal.
18. The Tribunal enquired as to Mr Okoye's personal circumstances. He advised he lived in the Property alone, although his 2 children aged 8 and 11, came to stay with him every second weekend. He advised that he worked as a civil/structural engineer.
19. The Tribunal asked Mr Paterson to explain why there was no Home Report as queried by Mr Okoye. Mr Paterson advised that his firm were not only solicitors but estate agents. A Home Report would only be instructed at the time you were ready to put a property on the market as it was only valid for 12 weeks. The Law Society of Scotland recommended that at that stage the Home Report be updated. In this case, the Property has not been put on the market as the Applicant requires vacant possession. The Tribunal also asked whether Mr Ewen owned any other properties. Mr Paterson advised the Property was the only other property he owned other than his own home.
20. The Tribunal asked Mr Okoye regarding the rent of the Property. He confirmed it was still £695 as it had been from the start of the tenancy. He confirmed also the Property was a 2 bedroomed terraced house. When asked about what size of property he had been looking for he explained he had been looking at two bedrooms minimum as he wanted something that was suitable for his children, a son and a daughter. He explained the rent of the properties varied up to about £900, depending on the area.
21. In his final repose, Mr Paterson submitted that the statutory requirements regarding his client having the intention to sell had been met and that it was reasonable to evict.

Findings in Fact

22. The Applicant is the owner and Landlord of the Property.
23. The Applicant is entitled to sell the Property.
24. The Applicant and the Respondent entered into a Private Residential Tenancy in relation to the Property on 13 January 2019 at a rent of £695. The rent has not been increased.
25. The Respondent lives in the Property on his own. The Respondent's son and daughter come to stay with him in the Property every second weekend.
26. On or about October 2022 the Respondent complained to the Applicant about repairs to the Property.
27. On 9 April 2023 the Applicant sent the Respondent an email purporting to terminate the tenancy on 31 May 2023. The Applicant stated in the email it was his intention to sell the Property. That email was not a valid means to terminate the tenancy.
28. The Applicant did not put the Property up for sale on 31 May 2023. The Respondent continued to live in the Property after 31 May 2023.
29. On or about June 2023 the Applicant was diagnosed with cancer. He has since undergone lifesaving surgery, chemotherapy and radiotherapy. The Applicant is receiving ongoing treatment.
30. The Applicant is 60 years of age and wishes to get his financial affairs in order. The Property is the only other property he owns other than his own home. The Applicant no longer wants to be a landlord. The Applicant intends to put the Property up for sale as soon as possible.
31. On 27 February 2024 the Applicant signed a Letter of Terms of Engagement with his solicitor and estate agent, Storie Cruden and Simpson in relation to the marketing and sale of the Property. He has instructed Storie Cruden and Simpson to sell the Property as soon as possible.
32. The Applicant's solicitor served a Notice to Leave on the Respondent by email on 27 February 2024. The Notice to Leave required the Respondent to leave the Property by 24 May 2024. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
33. The Respondent did not vacate the Property on 24 May 2024 and remains in the Property.

34. The Respondent continues to complain about repairs to the Property.
35. The Respondent has been looking for alternative accommodation in the private rental sector. He has not sought advice from the Homeless Team at Aberdeen City Council.
36. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Aberdeen City Council on 26 June 2024.

Findings in fact and in law

37. The Tribunal is satisfied that the facts required in Ground 1 of schedule 3 of the 2016 Act have been established.
38. The Tribunal is satisfied that it is reasonable to make an order for eviction.

Reasons for Decision

39. The Tribunal considered the issues set out in the application together with the documents lodged by both parties and the oral submissions made by both parties.
40. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1 of Schedule 3 which provides:-
- “(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.*

41. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave or unless it is not in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
42. Notice to Leave is defined in terms of Section 62 (1) of the 2016 Act as follows-*“References in this Part to a notice to leave are to a notice which*
(a) is in writing,
(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.”
43. In this case the Notice to Leave is in writing and clearly states it is the Applicant’s intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. A copy of the letter of terms of engagement with Storie Cruden and Simpson has been attached. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 24 May 2024. The Notice to Leave was served on the Respondent by email on 27 February 2024. In terms of Section 54 the notice period of the Notice to Leave is 84 days. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
44. The Tribunal considered the submissions made by Mr Paterson and by Mr Okoye. Whilst the Tribunal accepts that Mr Okoye had complained to the Applicant about repairs in or about October 2022 and that the Applicant had then sent an email on 9 April 2023 erroneously attempting to terminate the tenancy on 31 May 2023 at which stage the Applicant did not put the property up for sale, the Tribunal did not accept Mr Okoye’s position that that was indicative that the Applicant had no intention of putting the Property up for sale. The Tribunal accepted Mr Paterson’s submission that the Applicant was diagnosed with cancer shortly thereafter in June 2023. The Tribunal is of the opinion that the Applicant’s serious life threatening health issues would have prevented him from putting the Property up for sale or taking the proper steps to terminate the tenancy immediately after 31 May 2023.

45. The Tribunal accepted Mr Paterson's submissions that the Applicant intended to sell the Property as soon as possible if he obtained vacant possession for health reasons. In considering the question and meaning of "intends" the Tribunal considered the decision of Lord Justice Asquith in *Cunliffe v Goodman*[1950] 2K.B.237 at page 253:

"An "intention" to my mind connotes a state of affairs which the party "intending" – I will call him X – does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition.

X cannot, with any due regard to the English language, be said to "intend" a result which is wholly beyond the control of his will. He cannot "intend" that it shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to "intend" a particular result if its occurrence, though it may be not wholly uninfluenced by X's will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X.'s volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence." The Tribunal considered that the Applicant was

doing more than contemplating the sale of the Property. He had taken positive steps towards putting the Property up for sale by instructing solicitors and estate agents to handle the sale. When the Respondent did not leave the Property after the expiry of the Notice to Leave, he raised the current action. He had a genuine and firm intention to proceed to sell the Property. He had explained his reasons for doing so. The statutory requirements of Ground 1 do not require the Tribunal to consider the reasons for a landlord wanting to sell. However, the Tribunal is satisfied the Applicant's reason for doing so is for health reasons and wanting to put his financial affairs in order and that he has every intention of putting the Property up for sale within 3 months of obtaining vacant possession.

46. Accordingly, the Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as he regained possession.

47. Ground 1 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict

48. The leading Scottish authority on reasonableness is the case of *Barclay v Hannah* 1947 S.C. 245 at 249 per Lord Moncrieff ; the Tribunal must establish, consider and properly weigh the “*whole of the circumstances in which the application is made*” It may take into account whether the parties’ intentions are subjectively reasonable and it must “*objectively balance the rights and interests of both parties*” (*Manson and Downie v Turner (2023) UT 38 at paragraphs 41 and 42*).
49. In the present case it is relevant for the Tribunal to consider the Applicant’s legal right to sell the Property. The relevant circumstances on the Respondent’s side is a difficulty in finding a suitable property to rent.
50. The Tribunal considers the deciding factor to be that the Applicant exercises a right of property, which gives him the right to sell the Property. The Tribunal is of the opinion that that right must take precedence. The Tribunal considered the Respondent had taken the sensible step of looking for alternative accommodation which the Tribunal gave weight to. The Tribunal considered that the Respondent had had over nine months to do so. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
51. In the circumstances the Tribunal considered that in terms of Ground 1 of schedule 3 of the 2016 Act it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

52. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

17 November 2024

Legal Member

Date