

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/24/0188

Re: Property at 30 Nethan Place, Hamilton, South Lanarkshire, ML3 7TG (“the Property”)

Parties:

Ms Natalie Mann, 9 Lochburn Gardens, Glasgow, G20 0SL (“the Applicant”)

Ms Danielle Ntonfe, Mr Fopamo Anselme, 30 Nethan Place, Hamilton, South Lanarkshire, ML3 7TG; 30 Nethan Place, Hamilton, South Lanarkshire, ML3 7TG (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Angus Lamont (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 Respondents. The tribunal delayed execution of the order until 31 January 2025.

1. An application was received from the Applicant’s representative on 11 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 1A as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy tenancy agreement between the parties relating to the property which commenced on 8 May 2019.

- (ii) Copy Notice to Leave dated 23 June 2023 citing ground 1A, and stating the date before which proceedings could not be raised to be 25 September 2023.
 - (iii) Evidence of service of the Notice to Leave on the Respondents by sheriff officer on 28 June 2023.
 - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to South Lanarkshire Council, with proof of sending by recorded delivery and proof of delivery dated 27 June 2023
3. Following a request from the tribunal administration, further information was received from the Applicant's representative regarding evidence to support the eviction ground on 27 February 2024. The application was accepted on 21 March 2024.
 4. On receipt of the case file, the tribunal noted that the application had been brought on ground 1A only i.e. that the landlord intends to sell the property to alleviate financial hardship. The tribunal did not consider that sufficient information had been included with the application to evidence that this ground had been met. It therefore issued a direction to the Applicant on 25 July 2024 inviting her to provide further information about her financial circumstances from a suggested list, by 13 August 2024.
 5. A response to the Direction was received from the Applicant's representative on 13 August 2024. The covering email stated that the Applicant was unhappy about this invasion of her privacy, and the attachments provided appeared to contain information that may be considered to be sensitive/confidential. The tribunal administration therefore replied to the Applicant's representative asking them to confirm whether the Applicant was content for the submissions to be circulated in their current format, and if not, whether they wished to resubmit the information in a redacted form.
 6. As no response was received from the Applicant's representative prior to the case management discussion (CMD) fixed for 21 August 2024, the direction response was not sent to either the tribunal or the Respondents.

The first CMD

7. At the first CMD on 21 August 2024, at which all parties were present, the tribunal decided to adjourn the matter. This was because it was unable to consider whether the legal test had been met by the Applicant in respect of ground 1A in the absence of the required financial information. The tribunal also noted that the Applicant may wish to consider seeking to amend her application to include ground 1: landlord intends to sell.

8. The tribunal issued a second direction to the Applicant on 21 August 2024, requiring her to provide further information by 12 September 2024. The Applicant was required to confirm in writing whether she was content for the information received on 13 August 2024 to be circulated to the tribunal and to the Respondents, and if so whether she wished to redact any of this information before it was circulated..
9. The direction also stated that should the Applicant wish to amend her application to include ground 1 (landlord intends to sell) she should notify both the tribunal and the Respondents that she wished to do so at least 14 days prior to the adjourned CMD. Finally, the Applicant was directed to provide further evidence that she intended to sell the let property.
10. No response to the second direction was received until immediately before the adjourned CMD, which took place on 26 September 2024.

The second CMD

11. The adjourned CMD took place by teleconference call on 26 September 2024. The Applicant and her representative, Ms McShane of Igloo Estate Agents, were present on the call, as was Ms Ntonfe, the first Respondent. It became apparent during the CMD that an email had been received by the tribunal from the Director of Igloo Estate Agents shortly before the CMD, advising that, in the absence on sick leave of Ms Donna Marie Stewart (the Appellant's original representative), they had just become aware that the tribunal had requested this further information. The email stated that Ms McShane had been under the impression that verbal confirmation had been given at the previous CMD that all financial information that had been previously sent was to be circulated.
12. The Applicant advised the tribunal that she was content for the financial information to be circulated to the tribunal and to the Respondents without redaction. She also stated that she did not wish to amend the application to add ground 1.
13. The tribunal decided to again postpone the CMD to a later date to allow for the financial information previously submitted by the Applicant to be circulated to the tribunal and to the Respondents, and for the tribunal to consider this further.
14. The tribunal issued a third direction to the Applicant on 26 September 2024, inviting her to submit by 11 November 2024 any further evidence or updated information which she may wish the tribunal to consider in making a decision on her application, bearing in mind the matters which the tribunal must consider with regard to whether ground 1A has been evidenced, as set out in its note of the second CMD

15.No response to the third direction was received prior to the third CMD.

The third CMD

16.The third CMD was held by teleconference call on 25 November 2024. The Applicant and her representative, Ms Stewart of Igloo Estate Agents, were present on the teleconference call. Both Respondents were present on the call and represented themselves.

Preliminary issues

17.Miss Stewart advised that the Director of Igloo Estate Agents had sent a response to the tribunal's direction, which included a letter stating that Igloo would market the Applicant's property for her once the property was vacant. The tribunal had not seen this and it transpired that it had been sent to the caseworker's personal email address, which meant that the tribunal clerk could not easily locate it. Miss Stewart emailed a copy of the letter to both the tribunal and the first Respondent during the CMD.

18.The legal member noted that the tribunal had now had the opportunity to read the information submitted by the Applicant's representative on 13 August in support of her application under ground 1A. The tribunal had noted from this that the costs which the Applicant paid each month in respect of the property (including mortgage payments, the management fee, insurance and boiler service contract) were around £75 per month lower than the rent being received from the first Respondent. The information also showed that the Applicant had taken out additional borrowing against the mortgage over the property to pay off several credit debts.

19.There was however no information about her wider financial circumstances, including some of the information set out in the tribunal's first direction. While 'financial hardship' was not defined in the legislation, a recent Upper Tribunal decision relating to a ground 1A application made clear that in such cases, the tribunal required to consider not only financial hardship in relation to the property itself, but the Applicant's overall financial position.

20.The tribunal was required to be satisfied that the Applicant had demonstrated that the ground specified had been evidenced before it could go on to consider whether it was reasonable to grant an eviction order. On the basis of the information currently before the tribunal, it did not consider that the ground had been met.

21. At this point, the Applicant indicated that she wished to request that the tribunal allow an amendment to the application to add ground 1. The Respondents said that they had no objection to this. The tribunal noted that while ground 1 was not stated in the Notice to Leave, this was very similar to ground 1A. The Respondents had already been given notice in the Notice to Leave that the Applicant intended to sell the property, in terms of ground 1A. They were well aware of this, and were also aware that there had been previous discussion as to the possibility of amending the application to include ground 1. The tribunal therefore granted permission in terms of section 52 (5) of the 2016 Act to include amend the application to include ground 1 as a stated basis on which an eviction order is sought.
22. The Applicant therefore indicated that she wished to proceed with the application in terms of ground 1.

The Applicant's submissions

23. The Applicant and her representative asked the tribunal to grant an eviction order under ground 1. She told the tribunal that she intends to sell the property as soon as it is vacant. She is a single parent with a 7 year old daughter and is finding it difficult to manage financially given the costs involved in renting out the property. She is also concerned that there could be a large repair bill at some time which she would struggle to pay. She works part time and also has a mortgage to pay for her own property. She does not own any other rental properties. She is finding the tribunal process stressful and this is affecting her mental health. She is also suffering from increased migraines due to the stress involved.

The Respondents' submissions

24. Both Respondents reiterated that they did not wish to oppose the application, as they had said at the previous CMDs.
25. The first Respondent, Ms Ntonfe, said that she understood that the Applicant was experiencing financial difficulties and was a single parent like herself. She accepted that she would have to leave the property and did not want to cause distress to the Applicant.
26. The first Respondent is a single parent with two children aged 5 and 7, who are currently at school in the local area. She works part-time, and has no health issues
27. She has nowhere else to go with her children at present. She had looked at other private tenancies in the area, but these were too expensive for her. She had spoken to South Lanarkshire Council about finding alternative

accommodation, most recently after the previous CMD. The Council had indicated that she would need to wait until the tribunal process was concluded and that she should contact them again once an eviction order had been granted.

28. She therefore just wanted the tribunal process to end, so that she could move on and find somewhere else to live with her children. The Council had not told her how long it might be before they could find her a house. She may have to go into emergency accommodation, however, if there was not much time to find her somewhere once an eviction order had been granted.

29. The second Respondent said that he had nothing to add to this. He is currently living with a friend, and is on the Council's emergency housing list. He is unsure as to whether the eviction order will affect his current situation.

Findings in fact

30. The tribunal made the following findings in fact:

- The Applicant owns the property.
- There is a private residential tenancy in place between the parties, which commenced on 8 May 2019.
- The Notice to Leave was validly served by the Applicant on both Respondents by sheriff officer on 16 October 2023.
- The Respondents separated in 2020 and the second Respondent is no longer living in the property.
- The first Respondent is currently living in the property with her two children who are aged 5 and 7, who attend school in the local area.
- The Applicant intends to sell the property or put it up for sale as a vacant property within 3 months of the second Respondent ceasing to occupy it.
- The Applicant does not own any other rental properties.
- The Respondents do not oppose the application.
- The first Respondent is awaiting an eviction order to allow her to proceed with seeking accommodation from South Lanarkshire Council.

Reasons for decision

31. 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.

32. 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.*

33. The tribunal determined that as the owner of the property, the Applicant is entitled to sell it.

34. The Applicant told the tribunal that she intended to put the property on the market as soon as it was vacant. The tribunal also noted that the letter dated 10 October 2024 from the Director of Igloo Estate Agents stated that they would be marketing the property as soon as it was vacant. The Respondents did not dispute that the Applicant intended to sell the property. 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 first Respondent ceasing to occupy it.

35. 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.

36. The tribunal noted that the Applicant appears to be experiencing some financial difficulties. She is a single parent who works part-time and has a young

dependant child. While her rental income each month is slightly higher than the costs involved in renting the property, she may find it difficult to pay any other unexpected costs. She has no other rental properties. She is keen to proceed with selling the property as soon as possible, and it is now more than a year since the Notice to Leave was served on the Respondents.

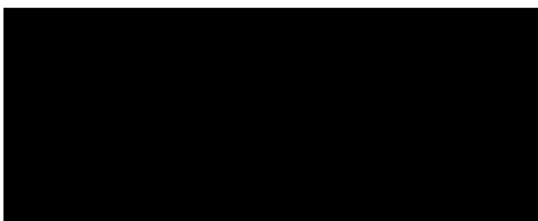
37. The tribunal noted that the Respondents did not wish to oppose the application. The first Respondent has been living in the property for five and a half years. She pays the rent each month and there appear to have been no issues with her tenancy. She is now a single parent with two children and works part time. She cannot afford the rent payable for other private tenancies in the area.
38. She accepts, however, that she will have to leave the property and that the Applicant is experiencing financial difficulties. She needs to obtain an eviction order if she is to secure council accommodation which is more affordable for her.
39. 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 Respondents did not wish to oppose the application, and that obtaining an eviction order would assist the first Respondent with her application to the council for permanent accommodation..
40. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.
41. 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 first Respondent more time to find a new property. The Applicant said that she was happy to allow the first Respondent to stay in the property until after the Christmas period. Ms Stewart suggested a period of 60 days from the date of the CMD. The first Respondent said that she would be happy with this.
42. Having considered all of the circumstances, including the fact that the council's offices would likely to be closed for around two weeks over the festive period, the tribunal decided to delay execution of the order until 31 January 2025 to give the first Respondent further time to secure a council property.

Decision

The tribunal granted an order in favour of the Applicant against the Respondents for recovery of possession of the property. The tribunal delayed execution of the order until 31 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.



25 November 2024

Date