



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/1203

Re: Property at 9 High Academy Grove, Armadale, EH48 3HT (“the Property”)

Parties:

Mr Charles David Prokipczyn, Mrs Elizabeth Anne Prokipczyn, 6 High Academy St, Armadale, EH48 3JF; 6 High Academy Street, Armadale, EH48 3JF (“the Applicants”)

Mr Steven Brewer, Ms Carolann Brewer, 9 High Academy Grove, Armadale, EH48 3HT (“the Respondents”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for possession relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application accepted on 10 May 2024 the applicants seek an order for eviction, relying on ground 1 (landlord intends to sell) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicants lodged the following documents with the application:
 - Copy tenancy agreement
 - Notices to leave

- Section 11 notice to local authority
 - Confirmation of sole selling rights agreement in favour of Rent Locally
3. The respondents lodged written representations stating that they had made an offer to purchase a property which had been accepted verbally on 11 September 2024.

Case management discussion – teleconference- 12 September 2024

4. The applicants were represented by Ms Yuill from Rent Locally, letting agents. The respondents attended on their own behalf.
5. Ms Yuill stated that the applicants had lodged the application as they wished to sell the property. She explained that a notice to leave had been served on 13 December 2023. She advised that the applicants were aware of the offer which the respondents had made to purchase a property the previous day. She advised that the applicants were amenable to extending the period of time before the application proceeded by a few weeks to allow for confirmation as to whether the purchase was proceeding. Ms Yuill stated that the applicants were of retirement age. She explained that they had offered to sell the property to the respondents before putting the property on the open market.
6. Mr Brewer stated that he is a self-employed painter/decorator. He had made an offer on a suitable property in the local area. This had been verbally accepted on 11 September 2024. Mr Brewer advised that he did not have confirmation as to when the process of purchasing the property would conclude and in particular, he was aware that those selling the property had to find alternative accommodation which may take some time.
7. As there was agreement between the parties that an adjournment would be appropriate to allow for confirmation of whether the prospective purchase by the respondents was proceeding and to confirm what the time scales for that would be the Tribunal determined to adjourn to a further cmd.

Case management discussion - 16 January 2025 – teleconference

8. The applicants were represented by Ms Todd from Rent Locally, letting agents. The respondents attended on their own behalf.

9. Prior to the cmd the respondents had lodged submissions stating that they had made an offer to buy a property that had been successful. The agreed date of entry would be 17 January 2025. A screengrab confirming that date from a solicitor had been submitted however no further documentary evidence was provided in relation to the transaction. The respondents stated that they would pay rent until 31st January 2024 and intended to leave on that date.
10. The applicants' representative had submitted email correspondence stating that the applicant had offered to sell the property to the respondents however they had made a lower counter-offer that was not acceptable.
11. At the cmd Ms Todd sought an order for eviction. She stated that in the absence of documentation showing that the respondents would definitely move out an eviction order was sought as there was no guarantee that the respondents would move out when they said they would. She stated that the applicants had offered to sell the property to the respondents who had turned down the offer. She stated that the applicants intended to sell the property as soon as possible if an order was granted.
12. Mrs Brewer confirmed that they were in the process of purchasing a new property and were due to receive the keys the next day on 17 January 2024. She stated that missives had been concluded and funds had been transferred in respect of the purchase. This was not the same property that an offer had been submitted for in advance of the previous cmd. Mrs Brewer stated that as they had purchased alternative accommodation they did not oppose an eviction order being granted as it would draw a line under the process. They did not seek to defend the application. Mrs Brewer confirmed that it was their intention to pay rent until 31 January 2025 when they would move out of the property.

Findings in fact and law

13. Parties entered into a private rented tenancy agreement with a commencement date of 24 August 2018.
14. The applicants are the joint owners of the property.
15. Notices to leave were served on the respondents on 13 December 2023.
16. The applicants intend to sell the property.

17. The respondents have concluded missives and transferred funds in relation to the purchase of a new home with an agreed date of entry of 17 January 2025.
18. The respondents intend to move out of the property on 31 January 2025.
19. It is reasonable to grant an order for eviction.

Reasons for the decision

20. Ground 1 states:

(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.

21. The Tribunal took into account the written representations and documents lodged together with oral representations at both cmds.

22. The Tribunal accepted that the applicants intended to sell the property as soon as possible. The Tribunal had regard to the document confirming that the applicants had engaged Rent Locally as their estate agents in respect of the sale of the property signed 5 March 2024 that had been submitted. The Tribunal also had regard to the email submitted by the applicant's representative dated 15 November 2024 which referred to negotiations that had taken place between

the parties in relation to a possible sale of the property to the respondents. The Tribunal accepted these documents as valid.

23. In relation to whether it was reasonable to grant the order the Tribunal gave great weight to the fact that the respondents stated that they did not seek to oppose the order being granted. The Tribunal accepted that the applicant's sought an order to protect their position in the event that the respondents did not remove from the property. In the circumstances the Tribunal considered that on balance it was reasonable to grant an order for eviction in favour of the applicants.

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.

Mary-Claire Kelly

Legal Member/Chair

16 January 2025_____
Date