



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 Act”)

Chamber Ref: FTS/HPC/EV/24/2440

Re: Property at 3 Wood Street, Greenock, PA16 7SS (“the Property”)

Parties:

Mr Mark Taylor, Mrs Sheila Taylor, C/o Neill Clerk & Murray, 3 Ardgowan Square, Greenock, PA16 8NW (“the Applicants”)

Mr Hendrik Ockert Van Der Westhuizen, 3 Wood Street, Greenock, PA16 7SS (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined to grant the order for eviction sought by the Applicant.

BACKGROUND

1. This is an application lodged on 29 May 2024 to bring to an end a Private Residential Tenancy (“PRT”) between the parties in respect of the Property commencing 3 July 2019, based on Ground 4 of Schedule 3 of the Act (landlord intending to live in the Property).
2. After a request for further information of 30 May 2024, answered by the Applicants’ agents (Neill, Clerk & Murray, Solicitors, Greenock) on the same date, followed by a further request of 25 June 2024, answered by said agents on 8 July 2024, the Tribunal accepted the application by Notice of Acceptance

of 5 August 2024 and a Case Management Discussion (“CMD”) was duly fixed for 16 December 2024.

3. Along with said response of 8 July, the agents lodged affidavits from both Applicants, detailing why they now wished to move back into the Property, namely due to the First Applicant’s employment in the United States coming to an end and health issues of the Applicants’ son.
4. An associated application, under Tribunal reference CV/24/4706, for payment of unpaid rent, was considered together with this application.
5. Prior to the CMD, preliminary consideration of the supporting documentation for this application confirmed that:--
 - a) Notice to Leave dated 1 March 2024 was sent by email to and presumably received by the Respondent on the same date, based on said Ground 4;
 - b) The appropriate local authority was notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003 on 30 May 2024; and
 - c) Service of this application was made on the Respondent’s wife by sheriff officers on 7 November 2024.
6. By email of 28 November 2024, the Respondent provided further information to the Tribunal in relation to the health, financial and personal circumstances of him and his family, acknowledging there were rent arrears, confirming efforts made to be rehoused, providing a timeline of events relating to his occupancy of the Property and making a request to continue the CMD to enable him to sort out alternative accommodation, failing which to delay enforcement of any order granted by 12 weeks for the same purpose.
7. By email on the morning of the date of the CMD, the Applicants’ agents advised the rent arrears now stood at £5650 and provided information from Pickfords regarding potential storage costs for the Applicants’ property.

8. At all times the Tribunal was aware that in relation to this eviction case, it required to be satisfied not only that the formal requirements regarding same had been complied with but also that it was reasonable to make the order for repossession.

CASE MANAGEMENT DISCUSSION on 16 December 2024

9. The CMD took place by teleconference and duly commenced at about 2pm. The First Applicant attended along with Elizabeth Ross, Solicitor, from the Applicants' agents.
The Respondent attended also.
10. By submission to the Tribunal and in response to questions then asked by the Tribunal so far as relating to this application, the First Applicant and Miss Ross advised and confirmed:--
 - a) The Applicants were asking for an eviction order to be made today, since the Property was now needed by the Applicants since the First Applicant's employment in the United States had now ended and he and his family wished to return home;
 - b) The Respondent had not engaged with the Applicants to any meaningful extent and in addition there were now rent arrears of £5650, which outstanding sum was causing hardship to the Applicants;
 - c) The Applicants had incurred further costs by requiring to arrange storage for their belongings as a result of not being able to move back into the Property;
 - d) The Applicants wished to move back into their home since they considered it would provide the most stable environment for their son to cope with his health issues;
 - e) The rent had been increased to £1200 monthly, from its initial figure in the PRT of £950;
 - f) There had been several different properties offered to the Respondent, including a 6 bedroom property in Robertson Street, Greenock, reasonably close to the Property but they had all been declined;

- g) The Applicants had a monthly mortgage commitment for the Property of £888, which they were not able to pay due to not receiving rent from the Respondent; and
- h) The Applicants considered they had exercised patience with the Respondent but were now looking to move back into the Property just as soon as possible, with any delay kept to a minimum.

11. By way of response to all that was said for the Applicants, the Respondent advised:--

- a) He did not agree with the suggestion he had not engaged with the Applicants and his timeline confirmed the contrary to be the case;
- b) The Property was his and his family's only home and they had nowhere else to go;
- c) He did not necessarily accept the rent had been increased and was wanting to pay any arrears based on the original monthly rent of £950;
- d) He was looking for a 4 bedroom house and had declined the 6 bedroom house in Robertson Street for reasons of principle, in that he believed the present occupant had been there for 12 years and he did not think it fair for them to be inconvenienced due to his difficulties. In any event, said property was a top floor flat with no garden and was unsuitable since his younger son's health issues were such that he had an emotional support dog;
- e) The other properties referred to had not been offered as such, but had been discussed on Facebook as possibly suitable, but they had not been affordable in any event;
- f) He was hoping to obtain alternative accommodation and had been advised by the Applicants agent that social housing would best suit his circumstances. He had then approached the local authority and Housing Associations. He advised that he had not been successful with this at present and he was seeking to be afforded the 12 to 16 weeks he understood it would take for this to happen. He was dependent on social housing agencies;
- g) He had a caseworker assisting him with the social housing process but he advised he had no confidence that they would assist him finding

alternative accommodation although he confirmed they had told him that this process would be expedited if an eviction order was granted;

- h) He accepted the Applicants wished to move back in and there were some arrears but he needed time to arrange alternative accommodation;
- i) He was working but his wife was not and he felt the Applicants had been applying pressure on him and his family to move out in circumstances where he was sympathetic to them but simply had nowhere else to go.

12. The parties were then content for the Tribunal to consider the application based on the information contained in the case papers and as advised at the CMD.

FINDINGS IN FACT

13. The parties entered into a PRT for the Property commencing 3 July 2019.

14. Due to a change in their personal circumstances, the Applicants now intend to live in the Property as their only or principal home for at least 3 months.

REASONS FOR DECISION

15. Based on the information available to it from the Applicants' affidavits and as advised at the CMD, the Tribunal was satisfied of the Applicants' intention to move back to the Property as their only or principal home.

16. The Tribunal was not unsympathetic to the Respondent but ultimately he was served notice on 1 March 2024 of the Applicants wish to return to their home. Given that this CMD has now taken place over 9 months later, the Tribunal feels that adequate time has been afforded to the Respondent to arrange alternative accommodation and, indeed, he appears to have had several opportunities to do so.

17. The Respondent also accepts he owes rent arrears although disputes the sum provided by the Applicants' agents. However, the Tribunal cannot disregard the acceptance of some arrears being due and the difficulties this is causing the Applicants in meeting their own financial obligations in respect of the Property.

18. The Tribunal also noted both parties had family with health issues but felt, on balance, it should still make the order, given the length of time the Respondent has had to arrange alternative accommodation.

19. In all these circumstances, the Tribunal was content it was just and reasonable to make the order sought and hopes that the grant of same might assist the Respondent in his efforts to obtain alternative accommodation.

DECISION

20. To grant the order for eviction sought by 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.

SR QUITHER

Legal Member/Chair

23 DECEMBER 2024

Date