



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

Chamber Ref: FTS/HPC/EV/24/1187

Re: Property at Craig of Garvock Cottage, Montrose, DD10 0DS (“the Property”)

Parties:

KIC (Holdings) Limited, KIC (Holdings) Limited, Kincardine House, Aberargie, Perth, PH2 9LX (“the Applicant”)

Mr Stephen McCann, Craig of Garvock Cottage, Montrose, DD10 0DS (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal determined that it was reasonable to suspend enforcement of the order for a period of 12 weeks from the date of the order.

Background

1. By application dated 7 March 2024 the applicant seeks and order for eviction relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant submitted the following documents with the application:
 - Copy short assured tenancy agreement
 - Copy private residential tenancy agreement

- Copy notice to leave with proof of service
 - Section 11 notice
 - Schedule of particulars for sale of property
3. A case management discussion (“cmd”) took place on 26 September 2024. The applicant was represented by Mr Mackay, solicitor, Gillespie Macandrew. The respondent attended on his own behalf. Mr McCann stated that it was his intention to move out of the property however, he was unable to do so as he was awaiting a decision in relation to a planning application. Mr McCann explained that he had no objection to the landlord’s actions. He advised that the reason he remained in the property was that he had nowhere else to go at present. He explained that he owned a piece of land and had applied for permission to build a dwelling house on the land. He stated that if permission is granted he will be able to move into a static caravan pending further development in terms of the planning application. Mr McCann advised that he instructed an architect who helped with the planning application.
 4. The application was adjourned to allow Mr McCann’s planning application to proceed. The Tribunal stated that in the event that the planning application has not been determined in advance of the adjourned cmd or if the application has been refused, the respondent will be required to state whether he seeks to defend the application at the adjourned cmd.

Case management discussion – 22 January 2025 – teleconference

5. The applicant was again represented by Mr Mackay. The respondent attended on his own behalf.
6. Mr Mackay sought an order for eviction relying on ground 1. He stated that the respondent had not provided any update in relation to the planning application in advance of the cmd. He stated that the applicant sought to sell the property and required an order to be granted.
7. Mr McCann stated that he had received an email from his architect the day before the cmd. He hadn’t been able to forward the email to the Tribunal administration however he read the email out. The email stated that a decision should be made in relation to the planning application within 8 to 10 weeks. The email stated that there had been some delay in the matter progressing as the

planning officer had been off ill. Mr McCann stated that he did not oppose the order being granted but asked that enforcement be suspended for a period to allow the planning application to be determined and for him to move into the static caravan. He stated that the caravan would be much better suited to his needs.

8. Mr Mackay did not oppose enforcement being suspended for a period as requested.
9. The Tribunal determined to grant the order as unopposed with enforcement suspended for a period of 12 weeks from the date of the order.

Findings in fact and law

10. The respondent and his late wife entered into an assured tenancy agreement with the applicant with a date of entry of 17th August 1990.
11. Parties entered into a private rented tenancy agreement with a commencement date of 17 July 2022.
12. The applicant is the owner of the property.
13. The applicant intends to sell the property.
14. The property is unsuitable for the respondent's needs.
15. The respondent has applied for planning permission to enable him to move to alternative accommodation.
16. The respondent is retired and lives alone.
17. It is reasonable to grant an order for eviction
18. It is reasonable to vary the date of enforcement of the eviction order until 16 April 2025.

Reasons for the decision

19. 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.

20. The Tribunal accepted the evidence that the applicant intended to sell the property. This was not disputed by the respondent.
21. The respondent did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. In the circumstances the Tribunal determined that it was reasonable to grant an order for eviction.
22. In relation to the suspension of enforcement, the Tribunal considered that 12 weeks was a reasonable period to defer enforcement as it would allow some time in addition to the time scale set out by the respondent's architect. The applicant's representative did not oppose the period of time sought and accordingly the Tribunal determined to suspend enforcement of the order until 16 April 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.



Legal Member/Chair

22 January 2025

Date