



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/24/2369

Re: Property at 57 Scotia Crescent, Larkhall, ML9 1HN (“the Property”)

Parties:

Ms Rosalind Sutherland, 154 Fergus Drive, Glasgow, G20 6AX (“the Applicant”)

Ms Courtney Cavanagh, 57 Scotia Crescent, Larkhall, ML9 1HN (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (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 Respondent. The Tribunal delayed execution of the order until 1 July 2025.

Background

1. An application was received from the Applicant’s representative on 22 May 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 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy private residential tenancy agreement between the parties, which commenced on 1 February 2018.
 - (ii) Copy notice to leave addressed to the Respondent dated 9 February 2024 citing ground 1, and stating the date before which proceedings could not be raised to be 6 May 2024.

3. Further information was requested from the Applicant by the Tribunal administration on 24 May, 20 June and 17 July 2024. In response to this, further information was submitted by the Applicant's representative on 30 May, 20 June, 1 and 23 July and 22 August 2024 on behalf of the Applicant. This included the following:
 - i) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council, together with proof of sending by email dated 31 May 2024.
 - ii) Copy email from the Applicant's representative to the Respondent dated 9 February 2024 attaching the notice to leave.
 - iii) Copy sales agreement between the Applicant and Love Life Properties dated 28 June 2024 relating to the sale of the property.
4. The application was accepted on 19 September 2024.
5. Further information was received from the Applicant's representative on 26 September 2024.
6. Notice of the case management discussion (CMD) scheduled for 25 February 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 20 January 2025. The Respondent was invited to submit written representations by 7 February 2025.
7. No written representations were received from the Respondent prior to the CMD.

The case management discussion

8. A CMD was held by teleconference call on 25 February 2025. The Applicant was present on the teleconference call along with her representative, Mrs Linzi Allison, Director of Allison Residential Lettings Ltd. The Respondent was present, as was her mother, Mrs Margaret Cavanagh. Mrs Cavanagh said that she wished to represent the Respondent, rather than act as a supporter. The Respondent had intended to represent herself, but was unable to do so due to severe anxiety and other mental health issues.
9. The Applicant and her representative indicated that they had no objection to Mrs Cavanagh representing the Respondent. Given the circumstances, the Tribunal agreed that Mrs Cavanagh could represent the Respondent, despite not having notified the Tribunal of this in advance.

Preliminary issue

10. Mrs Cavanagh told the Tribunal that the Respondent did not wish to oppose the application. She then suggested, however, that there may in fact be a short assured tenancy in place between the parties, rather than a private residential tenancy (PRT). She said that if that was the case, the application may have been brought under the wrong legislation.
11. Mrs Cavanagh agreed that the current PRT began on 17 January 2018, but said that there had been a previous short assured tenancy between the parties which started on 1 August 2017. The Respondent did not have a copy of this tenancy agreement and neither did Allison Residential Lettings Ltd. Both the previous tenancy agreement and the current PRT agreement had been arranged by a previous letting agent acting on behalf of the Applicant. The previous letting agent no longer had a copy of the short assured tenancy agreement.
12. Mrs Allison confirmed that this was the case. She said that the Applicant had been advised by the Scottish Association of Landlords to transfer to a PRT as this provided greater protection for the Respondent as a tenant. She submitted that the PRT had been agreed between the parties and had therefore superseded the short assured tenancy agreement.
13. The Tribunal noted that the PRT agreement had been signed by both parties. Mrs Cavanagh said that she accepted that this was the case. The Tribunal asked whether the Respondent had willingly agreed to enter into the PRT. Following a brief adjournment, Mrs Cavanagh confirmed that the Respondent accepted that a PRT was in place between the parties and did not wish to oppose the application.

The Applicant's submissions

14. Mrs Allison asked the Tribunal to grant an eviction order under ground 1. She confirmed that it was the Applicant's intention to sell the property as soon as it was vacant. It was still her intention to put the property on the market via Love Life Properties as soon as possible,
15. The Applicant explained that the main issue was that the rent being paid by the Respondent - £532 per month - was too low to cover her mortgage payments for the property, as these had increased the previous year. She was therefore making a loss and was struggling to keep up her mortgage payments. The Respondent was currently in receipt of universal credit and her rent was being

paid for via housing benefit. She was therefore not in a position to pay a higher monthly rent.

16. Mrs Allison explained that the Applicant, a former nurse, was no longer able to work, having suffered several strokes. The matter had now been ongoing for over a year, and the situation had been causing the Applicant considerable distress.
17. When asked whether she had considered selling the property with the Respondent in situ as tenant, the Applicant said that she had not done so. Mrs Allison said that this would be difficult to do in practice, as other potential landlords would not buy the property given the current rent. The Applicant did not wish to sell the property, and there was a good relationship between the parties. However current market rents in the area for a similar property were around £750. The Applicant owns 7 other rental properties in the area which are all let out for rents of around that amount.

The Respondent's submissions

18. Mrs Cavanagh told the Tribunal that there was a good relationship between the Respondent and the Applicant. The Respondent understood the Applicant's difficulties and did not wish to oppose the application. She is, however, unable to leave the property until she has found somewhere else to live.
19. The Respondent is a single parent who currently has severe mental health issues. She is prescribed strong medication and is under the care of a psychiatrist. She has two children aged 9 and 1 living with her in the property. She previously worked as a hairdresser but is currently unable to work due to her health issues and is on benefits.
20. The Respondent never intended to live in the property long term, but had been advised by the council that she should stay there until an eviction order was granted. She has been in contact with South Lanarkshire Council, which has now accepted her housing application and recognises that she is not making herself intentionally homeless. She has an appointment to discuss her housing options on 4 March 2025. The housing application process in South Lanarkshire is made to the council but also includes registered social landlords in the area.
21. The Respondent has looked at other private rented accommodation but the rents are significantly higher than her current rent, and it is therefore too expensive for her. She would be willing to take a property anywhere in Larkhall were she offered this, but did not wish to end up in temporary homeless accommodation. She needs to stay in the local area as she provides care for

her mother, Mrs Cavanagh, and her grandmother. She does not drive and the local public transport is unreliable.

Findings in fact

22. The Tribunal made the following findings in fact:

- The Applicant owns the property.
- The Applicant is the registered landlord for the property
- There is a private residential tenancy in place between the parties, which commenced on 1 February 2018.
- The Notice to Leave was validly served on the Respondent by email on behalf of the Applicant on 9 February 2024.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.

Reasons for decision

23. 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.

24. 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.

25. The Tribunal determined that, as the owner of the property, the Applicant is entitled to sell it. Having had regard to the oral evidence submitted on behalf of the Applicant, and the letter from Love Life Properties dated 28 June 2024, the tribunal also found that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
26. 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.
27. The Tribunal found that there was a difficult balance to be struck given the circumstances of both parties. Both parties have health issues and difficult personal circumstances. The Applicant is no longer able to work due to her health issues. She is experiencing financial difficulties due to the low rent in place and the increase in her mortgage rate. It would be difficult for her to sell the property with the Respondent in situ, given the impact of this on the likely sale price and the difficulty in finding another potential landlord to take this on.
28. The Respondent has two young children living with her and is currently living on benefits. She is experiencing serious mental health issues at present, and is also a carer for her mother and grandmother. While she has been living in the property for a considerable length of time, she does not wish there long term. She is hoping to find more permanent and affordable social housing. She needs an eviction order to allow this to happen.
29. 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 Respondent did not wish to oppose the eviction application, and needed an eviction order to help her to secure social housing for herself and her children.
30. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

31. Before deciding to grant the order, the Tribunal sought the views of the parties on the possibility of delaying execution of any eviction order beyond the standard 30 day period, in terms of rule 16A of the 2017 rules, to give the Respondent more time to find a new property.
32. Mrs Cavanagh asked if the Tribunal could delay execution until the Respondent had been offered a new property. The Tribunal chairperson explained that it was only possible to delay execution until a particular date, rather than when a specific event occurred. Mrs Cavanagh asked for a delay of five months beyond the standard 30 day period.
33. She informed the Tribunal that she was currently a kinship carer for her two other grandchildren and that it was possible they may be returned to their mother soon. If that happened, it may be possible for the Respondent and her children to move in with her temporarily. She was currently awaiting an assessment, however, and would not know whether this would happen until April. If an extension were granted by the Tribunal, the Respondent would move out as soon as possible were she offered somewhere else to live, other than temporary homeless accommodation.
34. The Applicant said that she wished to help the Respondent if she could. Mrs Allison noted, however, that the Applicant's mortgage was due to increase again at the end of May. The Applicant would be willing to agree an extension to the execution of the eviction order until then, which was around 3 months from the date of the CMD.
35. Having taken all of this into account, the Tribunal decided to delay execution of the order by around 3 months until 1 July 2025, to give the Respondent further time to find somewhere else to live. Both parties indicated that they were happy with this outcome.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delayed execution of the order until 1 July 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.

Sarah O'Neill

25 February 2025

Legal Member/Chair

Date