



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/24/3494

Re: Property at 101 Garvock Hill, Dunfermline, Fife, KY12 7RN (“the Property”)

Parties:

Ms Lorna McIntyre, Pentland Lodge, Damhead, Midlothian, EH10 7DP (“the Applicant”)

Mrs Ashley Nimmo, Mr David Nimmo, 101 Garvock Hill, Dunfermline, Fife, KY12 7RN (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction

Background

1. By application submitted on 24 July 2024 the applicant seeks an order for eviction on the ground that she intends to sell the property. The application was heard alongside conjoined application FTS/HPC/CV/24/4563 seeking an order for payment in respect of arrears of rent.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Rent statements
 - Notice to leave with proof of service
 - Section 11 notice with proof of service
 - Copy correspondence re sale of property
3. A case management discussion (“cmd”) was assigned for 31 March 2025

Case management discussion – 31 March 2025- teleconference

4. All parties were in attendance.
5. The applicant sought an order for eviction relying on ground 1. She stated that her intention remained to sell the property. She referred to the to the extensive arrears in the property which were now in excess of £7400. She referred to the rent statement which showed that the respondents had paid the monthly rent on 2 occasions since June 2024. A further payment had been missed at the start of March which had increased the outstanding amount to £8325. The applicant stated that the respondent's failure to pay the rent had a significant impact on her finances. She stated that there was an outstanding mortgage over the property. She also had a mortgage over her own home which meant that for an extended period of time she had to cover the cost of both mortgages. The applicant stated that the extensive rent arrears had caused her family a great deal of stress and that she has had to borrow money from members of her family. She has also recently received a redundancy notice from her job as a quality engineer, which takes effect in June 2025. She advised that she wished to sell the property in order that she could purchase a family home for herself and her family.
6. The respondents stated that they did not oppose an order for eviction being granted under ground 1. However, they sought an extended period before the order became enforceable in order that they had time to secure alternative accommodation.
7. The respondents stated that they resided with their 4 children, twins aged 18, a 16 year old and a 12 year old. The property has 3 bedrooms. The first respondent works part time however her ability to work has been impacted by her health. She is currently awaiting a diagnosis for fibromyalgia. The second respondent is self employed as a mechanic. He stated that his income varies but at present is usually around £1300-£1400 per month, The respondents stated that they are not receiving any income from universal credit. They stated that they had previously received a top-up of benefits however this stopped when their eldest children turned 18. They stated that up until October 2024 they had been receiving £600-£800 per month towards housing costs. The respondents stated that they had been actively looking for accommodation in

the private sector. They stated that they were concerned that if they were accommodated by the local authority they could be placed anywhere. The respondents stated that it was difficult to find a property that would accommodate their family. They stated that they had found one property however had lost out as the applicant had not provided a reference. The applicants were not able to specify how long they sought an extension of the period before an eviction order would be enforced but were clear that they required more time.

Findings in fact and law

8. Parties entered into a private rented tenancy agreement with a commencement date of 1 September 2019.
9. The applicant is the sole owner of the property.
10. The applicant intends to sell the property.
11. A notice to leave was served on the respondents on 29 January 2024 advising them that the applicant intended to sell the property.
12. The respondents reside with their 4 children.
13. The respondents are seeking accommodation in the private sector.
14. The respondents have rent arrears in excess of £7400 in the property.
15. The respondents do not oppose an order for eviction being granted.
16. It is reasonable to grant an order for eviction.
17. It is not reasonable to vary the date of enforcement of the eviction order.

Reasons for the decision

18. 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.

19. The Tribunal accepted the evidence that the applicant intended to sell the property. This was not disputed by the respondents.
20. The respondents did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted.
21. In relation to the respondent's request to vary the date of execution to suspend enforcement of the order the Tribunal did not consider that it was reasonable to extend the period. The Tribunal had some sympathy for the respondents' personal circumstances and the fact that they required a 3 bedroom property which were in scarce supply. The Tribunal also took into account the age of the respondents' children and the first respondent's ill health. However, against that the Tribunal took into account the very high arrears. The Tribunal were particularly swayed by the financial impact the extended period of nonpayment had on the applicant and the fact that the respondents had paid nothing towards the rent account since 1 October 2024. Any extension would likely lead to an increase in the arrears and a greater impact on the applicant. The Tribunal also took into account that 14 months had passed since the service of the notice to leave and therefore the respondents had already had an extended period to source alternative accommodation. The applicant had not been at fault in relation to her conduct and in the circumstances the Tribunal determined that it was not reasonable to grant an extension of the usual period of 30 days before the decree could be enforced.

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

Mary-Claire Kelly

Legal Member/Chair

31 March 2025

31 March 2025

Date