



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/24/2452

Re: Property at 15 Strathblane Road, Glasgow, G66 7AH (“the Property”)

Parties:

Mrs Margaret Boyle, Haughead, 1A Burnlea Road, Largs, KA30 8BX (“the Applicant”)

Ms Emma McAnally, 15 Strathblane Road, Clachan of Campsie, Glasgow, G66 7AH (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an application for an eviction order, in relation to a Private Residential Tenancy (“PRT”), made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (“the Rules”). The PRT is between the Parties and relates to the Property. The tenancy commenced on 6th September 2022.
2. The application was lodged, by email, with the Tribunal on 28th May 2024.
3. The application relies upon a Notice to Leave dated 14th February 2024, issued in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”), served upon the Respondent by email on 14th February 2024, all in accordance with the provisions of the PRT. The Notice was made in terms of Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends

to sell". The Notice to Leave intimated that an application to the Tribunal would not be made before 11th May 2024.

4. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon East Dunbartonshire Council on 14th May 2024.
5. The application papers also included a letter addressed to the Applicant from R&G Estate Agents dated 20th June 2024 which confirmed that the Applicant had instructed R&G Estate Agents to provide the Applicant with a value of the Property and details of their fees in connection with the marketing and sale the Property. The Applicant has confirmed in her application that she intends to instruct R&G Estate Agents to market and sell the Property.
6. By email dated 13 November 2024 the Respondent lodged written representations in relation to the application. The Respondent opposes the application. She has challenged the validity of the Notice to Leave which the Applicant served upon her. The Respondent has also challenged whether the Applicant has a genuine intention to sell the Property. The Respondent has also set out reasons as to why she does not consider that it is reasonable for the eviction order to be granted.

Case Management Discussion

7. The matter called for a first Case Management Discussion ("CMD"), conducted by remote telephone conference call, on 29th November 2024. The Applicant was represented on the conference call by Ms Maria McNulty from R&G Estate Agents. The Respondent also joined the conference call.
8. At the CMD the Tribunal directed that by 12 February 2025 the Applicant was to lodge a written submission with the Tribunal which set out:
 - a. a response to the Respondents' averment that the Notice to Leave is invalid, and
 - b. the reasons why she considers it is reasonable for the Tribunal to grant an order for eviction, including her reasons for wishing to sell the Property.
9. By email dated 10 February 2025 the Applicant lodged written submissions with the Tribunal in answer to the Tribunal's directions. The submission included a letter from the Applicant's doctor.
10. At the CMD the Tribunal directed that by 12 February 2025 the Respondent was to lodge a written submission with the Tribunal which sets out any steps the Respondent had taken to identify suitable alternative accommodation for her and her family, including the size, locality and proposed rent, together with

reasons why the Respondent considers such properties as unsuitable for her and her family.

11. By email dated 12 February 2025 the Respondent lodged written submissions with the Tribunal in answer to the Tribunal's directions. The submission included

- I. Details of two properties that the Applicant had considered in a search for alternative housing
- II. Copy email dated 10 February 2025 from Pauline Clark, a previous tenant of the Applicant at the Property, and
- III. Letter from the Respondent's doctor dated 21st November 2024.

12. By email dated 20th February 2025 the Respondent lodged copy emails with the Tribunal. The emails were lodged by the Respondent as productions to which the Respondent would wish to refer at a hearing on evidence. These emails were dated February 2024 and were between the Respondent and the Applicant's letting agents.

The Hearing

13. The matter called for a hearing of evidence, conducted by remote telephone conference call, on 26th February 2025.

14. The Applicant was again represented by Ms Maria McNulty from R&G Estate Agents. Ms McNulty gave evidence to the Tribunal at the hearing. The Applicant did not attend the hearing and did not give evidence.

15. The Respondent also joined the conference call and gave evidence to the Tribunal.

Preliminary Issue – Validity of Notice to Leave

16. Part 3 of the Notice to Leave (Details and Evidence of Eviction Grounds) as served upon the Respondent was not completed by the Applicant prior to service of the Notice. It was annotated by the Applicant as "this section is not applicable".

17. Paragraph 5 of the application form as submitted by the Applicant stated two grounds upon which the Applicant sought an order for eviction. The two grounds were:

"Ground 1: The Landlord intends to sell the Let Property and
Ground 11: The Tenant has breached a term (s) of the tenancy agreement."

18. On 19th June 2024 the Tribunal sent an email to the Applicant which stated:

“It is not clear why part 3 of the Notice to Leave has been marked as not applicable. This section is applicable and a failure to complete it may invalidate the Notice to Leave. Please provide your representations as to the validity of the notice.

You state that the application is made on grounds 1 and 11, but the Notice to Leave only indicates ground 1. If you wish to add additional grounds, you must make clear that is the case, and provide evidence to support the additional ground, bearing in mind that ground 11 specifically excludes rent arrears. The issue of whether to grant permission to include an additional ground will be considered at the case management discussion if the application is accepted.

You must provide evidence to support ground 1. The legislation states examples of such evidence as a home report or letter of engagement with a selling agent.”

19. The Applicant responded to the Tribunal’s request for further information by email dated 28th June 2024 in the following terms:

“Please disregard ‘not applicable’ in section 3 of Notice to Leave –please see attached email from confirming the appointment of R&G Estate Agents to sell 15 Strathblane, Clachan of Campsie, G66 7AH can be validated in the attachment of this email.

I can confirm that it will only be Ground 1 in support of this application, please disregard Ground 11.

In support of Ground 1, I attach a Market Appraisal Valuation for the property, supported with the email attachment, confirming the appointment of R&G Estate Agents Ltd as the selling agent for 15 Strathblane Road, Clachan of Campsie, G66 7AH.”

20. On 24th July 2024, the Tribunal issued a notice of acceptance of the application.
21. The application includes the exchange of the above emails between the Applicant and the Tribunal. The Application also includes a copy of the Applicant’s email which appointed R&G Estate Agents Ltd as the selling agents for the Property, together with their Market Appraisal Valuation of the Property.
22. The full application was served upon the Respondent on 24th October 2024.
23. In her written submission to the Tribunal the Respondent submits that the Applicant has not followed correct procedures in relation to the Notice to Leave and the application. She considers that the conflicting notice and application fail to meet Scottish Government guidance for landlords and tenants on private residential tenancies, as they lack clarity and appear to be inconsistent. She considers that these inconsistencies have caused her confusion in relation to

the application process and considers that the Applicant should be required to issue a new Notice to Leave that clearly states the correct ground and intentions of the Applicant, with clear reasons as to why the Applicant is seeking an eviction order.

24. In her written submission to the Tribunal the Applicant accepts that the Notice to Leave was not completed correctly at Part 3. She submits that the notice clearly states that the landlord wishes to sell the Property. She further submits that although the notice did not include evidence which supported her intention to sell the Property, such evidence has been provided to the Tribunal and included with the application which was served by the Tribunal upon the Respondent. The Applicant considers that the Notice to Leave was not confusing for the Respondent as it clearly states that the Applicant intends to sell the Property and provides the Respondent with a date by which the Respondent must leave the Property. Although the application refers to an additional ground for eviction (Ground 11- breach of tenancy) the Applicant had clarified with the Tribunal that she was only seeking to rely upon Ground 1 (Landlords intention to sell) and that the reference to Ground 11 should be disregarded. This had been made known to the Respondent at the time the application was served.
25. Section 52(3) of the act requires a valid Notice to Leave to have been served on a tenant and a copy of that notice must accompany the application to the Tribunal.
26. The Tribunal considered whether the Notice to Leave in this case was valid. Part 3 of the Notice had not been completed correctly before service upon the Respondent.
27. Section 73 of the Act states:
“An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.”

That section of the Act confers on the Tribunal a specific power to treat a Notice to Leave as valid, notwithstanding the fact that it contains an error, provided that the requirements of that section are met. The requirements of the section are met unless the error in the Notice to Leave materially affects the effect of that Notice.

28. The Tribunal do not consider that the failure of the Applicant to properly complete Part 3 of the Notice to Leave materially affects the effect of that Notice. It is clear from the terms of the Notice to Leave that the Respondent is being given Notice to Leave the Property as the Applicant intends to sell the Property. The Applicant has ticked the box on the notice that the Landlord has chosen to serve the notice on the ground that she intends to sell the Property. The Notice provides the Respondent with a date which is the earliest date upon which the Applicant could start Tribunal proceedings. Part 3 of the Notice

requires to the Applicant to give reasons for seeking an eviction. Although no reason is given in that Part of the Notice, such reasons are clear from the Ground upon which the Applicant relies for service of the Notice – being the Applicant's intention to sell the Property. It may be that, in certain situations, the requirement to provide reasons for seeking an eviction are more critical. For example, where a Tenant has rent arrears, it may be important for the Landlord to specify on the Notice the amount of rent arrears due, or the frequency of a Tenant's failure to pay rent due. That is giving the Tenant fair notice of the reasons for the Landlords decision to serve the Notice to Leave. In this case the Applicants reasons are clear, whether, or not, Part 3 of the Notice is complete. The Applicants reasons for service of the Notice are clear from Part 2 of the Notice.

29. Part 3 of the Notice also allows a landlord to provide evidence to support the eviction action. That part of the Notice is permissive, not compulsory. In any case, the Applicant in this case did provide written evidence of her instructions to estate agents to value and market the Property (albeit that such evidence did not accompany the Notice to Leave, but were provided as part of the application to the Tribunal).
30. The Tribunal are satisfied that the failure of the Applicant to complete Part 3 of the Notice to Leave does not materially affect the effect of the Notice to Leave in this case. Accordingly, the Tribunal determined that the Notice to Leave is not invalid.
31. The Tribunal further consider that the reference to Ground 11 as a ground for eviction in the application is not material. The Applicant clarified that the inclusion of Ground 11 was to be disregarded. The Respondent was notified of that at the time the application was served upon her.
32. The Tribunal do not accept that there was any material confusion caused to the Respondent by the terms of the Notice to Leave or the application. It is clear from all of the documents which form the application, as served upon the Respondent, that the Applicant wished to recover possession of the Property to allow her to sell the Property.

Summary of Evidence

33. At the hearing on evidence, the Applicant's agent confirmed that the application for eviction was insisted upon. The Applicant's agent referred to the written submissions lodged on behalf of the Applicant, and answered questions from the Tribunal members.
34. It was explained that the Applicant is 78 years old and becoming increasingly frail. The Applicant has, more recently, found the pressures of being a landlord to be overwhelming. She had bought the property with a view to using the rental income from the lease of the property to top up her pension. The Applicant has

found that her advancing years have made being a landlord untenable. She finds it difficult to make decisions about what is required in her capacity as a landlord. The Applicant has some savings although she only has a small pension having lived abroad in Canada for some time. She wishes to sell the property to enable her to release the capital funds from the sale of her asset. The Applicant recognises that works are required to repair the property and has found the prospect of making decisions about such works overwhelming. She is concerned about the costs of any required repairs. The Applicant does not wish to sell the property with a sitting tenant as it would significantly impact upon the value of the property on the open market. The Applicant bought the property as an asset and now wishes to realise the funds to give her some financial security in her later years. The Applicant no longer wishes to be a landlord.

35. The Applicant's agent explained that she had spoken to the Applicant prior to service of the Notice to Leave upon the Respondent. The Applicant's agent had explained to the Applicant options and the Applicant took time to consider whether she wished to continue to let the property. Having taken that time to consider matters, the Applicant had reached the decision that which she wished to sell the property she considered the pressures of being a landlord to being overwhelming.
36. The Respondent referred to her written and answered questions from the Tribunal members.
37. The Respondent confirmed that she had been a tenant at the property since 2022. She lived with in the property with her two children aged six and one. Her partner now also occupied the property with her and her family. The Respondent's eldest child is at the local school. This child is waiting for an assessment for autism. The Respondent is concerned that any change of address out with her current health board area could further delay her child's autism assessment. In her written submission the Respondent has explained that she chose to live in the locality of the Property as it was local to available childcare support from her mother. The Respondent explained she and her family having become part of the local community and that any move from the Property would disrupt her son's schooling and it would also have an impact on his mental health and well-being. The Respondent explained that concerns regarding her potential eviction from the property have taken its toll on her physical and mental health. She referred to a letter from her doctor dated 21st November 2024 and lodged with the Tribunal. The Respondent explained that she previously had to move home due to domestic abuse and she is concerned about the impact of any further move up on her children.
38. In her evidence to the Tribunal the Respondent confirmed that she was trying to save to buy her own property and that she does not wish to remain in the private rented sector. She would be reluctant to rent again from a private landlord. She would wish to remain in the locality of Milton of Campsie and has looked at alternative properties. The Property she currently leases is a 2 bedroom property, and her future preference would be for a three bedroom property. The Respondent has looked for alternative properties but has not

been able to find one which she considers to be affordable and within her desired locality. To rent a property of a sufficient size the Respondent believes that she may have to pay rent in excess of £900 per month. The Respondent explained that the income of her and her partner is an excess of £4,000 per month. The tenant has now registered with the local authority common housing register, as seeking accommodation. She registered in February 2025. She explained she did not previously register for accommodation with the local authority after she had received the Notice to Leave in February 2024 because of the stress and because she was unable to find time to attend to that matter.

39. The Respondent questioned the Applicant's intention to sell the property, particularly at the time that the notice leave was served. The tenant has been in contact with the previous tenant of the Applicant who maintains that she was asked to leave the property by the Applicant after she complained that repairs required to be completed at the Property. The Respondent further believes that the Applicant only made the decision to sell the Property after a recent survey was carried out at the property which identified that further repairs were required to the property. The Respondent does not believe that the Applicant had a genuine and settled intention to sell the property at the time the Notice to Leave was served, although she accepts that the Applicant now does have a genuine intention to sell the property.
40. The Respondent confirmed to the Tribunal that he had no reason to doubt that the Applicant intended to sell the Property as at the date of the hearing.
41. Taking account of all of the circumstances she has explained in her written and oral evidence to the Tribunal, the Respondent does not consider that it is reasonable for the Tribunal to grant an order for her eviction.

Findings in Fact and in Law

42. On 6th September 2022 the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date ("the Tenancy").
43. Notice to Leave was emailed to the Respondent on 14th February 2024.
44. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 part 1 of the 2016 Act on 28th May 2024,
45. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Dunbartonshire Council on the Applicant's behalf on 14th May 2024.
46. The Applicant has instructed R&G Estate Agents to market the Property.

47. The Applicant intended to sell the Property at the date of service of the Notice to Leave . The Applicant is entitled to sell the let property. The Applicant 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.

48. It is reasonable to issue an eviction order on account of those facts.

Reasons for Decision

49. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent

50. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

(1.)...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.

(2) 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.

51. The Applicant has engaged agents to sell the Property. She has entered into an agreement with R&G Estate Agents as to the terms and conditions of estate agency services in connection with the property. The Tribunal accepted the unchallenged evidence that the Applicant wishes to sell the property as she no wishes to remain a landlord. The Applicant is finding the obligations of being a landlord to be stressful and overwhelming. The Respondent considers that there is a reasonable doubt as to whether the Applicant genuinely intends to sell the Property. The Respondent considers that evidence she has presented to the Tribunal suggests that the Applicant served a Notice to Leave as the Applicant had been advised she would require to pay for necessary repairs to the Property. The Tribunal do not accept that the Applicant did not intend to sell the Property by the date of the Notice to Leave. The Applicant has confirmed that she was aware that repairs were required at the Property. She was concerned at the possible costs and was finding it difficult to make decisions on these matters. The Applicant therefore decided to sell the Property. The Respondent accepted in her evidence that, by the date of the hearing of the Application, the Applicant intended to market the property for sale as soon as

the Respondent ceased to occupy. We were satisfied on the evidence that the Applicant has a genuine intention to sell the property and that Ground 1 of Schedule 3 to the 2016 Act had been established.

52. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. It is well established that in determining whether it is reasonable to grant an order all relevant circumstances are taken into account, including personal circumstances, *Barclay v Hannah* 1947 SLT 235 and *Cumming v Danson* 2 ALL ER 653. The Tribunal had regard to the Upper Tier Tribunal's decision in an eviction application also relying on ground 1 *Caroline Manson and David Downie against Virginie and Iain Turner* UTS/AP/23/0018 – in determining whether it was reasonable to grant an order the Tribunal was required not only to identify the factors which it had taken into account, but also to explain why it had given more weight to those factors supporting the conclusion which it reached, relative to those which pointed the other way. Parties should be left in no doubt as to why the Tribunal reached the conclusion that it did. In assessing whether it is reasonable to grant an order all available facts relevant to the decision required to be considered and weighed in the balance, for and against.
53. The Tribunal took into account the application and documents lodged by the parties together with the oral representations and evidence heard at the hearing in reaching a decision.
54. The Tribunal found the evidence presented on behalf of the Applicant to be credible and reliable. In relation to the question of reasonableness the Tribunal gave great weight to the impact of the ongoing tenancy on the Applicant. She is 78 years old. She is finding it difficult to make decisions in relation to the maintenance of the Property, and in relation to the tenancy of the Property. The Tribunal gave weight to the evidence presented that the Applicant can feel overwhelmed by the decisions she requires to make in relation to the Property. The Tribunal also gave weight to a letter from the Applicant's doctor which states that, in the doctor's opinion, the Applicant's mental health is deteriorating because of the stress and anxiety caused by issues in relation to the lease of the Property. The Tribunal accepts that the evidence presented on behalf of the Applicant confirms that she now wishes to sell the Property to relieve her of her obligations as a landlord and to allow her to realise the capital value of the Property to support her financially.
55. The Tribunal did not find the Respondent's evidence to be wholly reliable. Her evidence was inconsistent. Although the Respondent disputes that it is reasonable for the Tribunal to grant an order for eviction it appeared to the Tribunal that the Respondent had not taken reasonable steps to identify a suitable alternative property for her and her family after she had been served with the Notice to Leave. She indicated in her evidence that she wanted to live in a 3 bedroom property as that would be more suitable for the needs of her family. She further explained that she would prefer to live in the same locality

as the Property. She explained that she had not been able to find a suitable property that met those needs. The Respondent appeared to suggest that she could only find such a property if she was prepared to pay a rent which was significantly higher than the rent paid for the lease of the Property. She confirmed in her evidence that the joint net income of her and her partner was in excess of £4,000 per month. The Tribunal took the view that the Respondent and her partner could afford to pay a higher rent if she genuinely wished to move to such an alternate Property. The Respondent stated that she did not want to remain in a privately rented property. She wished to save enough money to allow her to buy her own property. The implication of the Respondent's evidence was therefore that she considered she should be allowed to remain in the Property for however long it took to save enough money for that purpose. The Tribunal did not consider that was a reasonable position for the Respondent to take.

56. The Tribunal took into account that the Notice to Leave had been served in February 2024. The Respondent had had over a year to identify an alternative property for her family. She had only viewed a few properties over that period. She had only contacted the local authority to be placed as an Applicant on the common housing register in February 2025. The Respondent did not demonstrate any serious effort or intent to find suitable alternative accommodation.

57. The Tribunal considered the impact that an order for eviction would have on the Respondent's family. The Tribunal gave significant weight to the fact that there were two young children in the property who were well settled there and had links with the local area through school. Moving house at short notice would inevitably be unsettling for them. The Respondent had raised that her eldest child had been waiting for a long period for a referral for assessment for autism. She was concerned that a move out with her current health board area might further delay that assessment. The Respondent did not, however, lodge or refer to any documentation which supported her concerns in that respect. The Respondent did lodge a letter from her own Doctor dated 24th November 2024. That letter noted that the Respondent was suffering from stress and anxiety exacerbated by her current living conditions. The letter further confirmed that the Respondent's son and daughter had been seen with coughs and likely viral upper respiratory tract infections. The doctor observed in his letter that mould in the house can be responsible for breathing difficulties. The terms of the letter suggested that the Property was not suitable for the needs of the Respondent and her family. The letter from the Respondent's doctor did not make any comment on any impact an eviction order might have on the Respondent or her family. The evidence of the Respondent suggested that the Property was now too small for the needs of her family and that the condition of the Property was a risk to her family's health. In such circumstances it was not clear to the Tribunal why the Respondent had not taken further action to secure a home which was more appropriate to the needs of her family.

58. The Tribunal considered that when balancing competing factors on the issue of reasonableness the fact that the Respondent and her partner had a

reasonable joint income at their disposal to secure alternate accommodation was a persuasive factor in favour of granting an order. The Respondents would be negatively impacted by an eviction order but the impact on them and their family was offset by their ability to rent alternative property. The Respondent has chosen to limit the locality in which she is prepared to live. The impact of the continuation of the tenancy upon the Applicant is detrimental. Given her age and stated intentions for the proceeds of the sale and the fact that she was intending to exit the rental market, which she found to be very stressful the Tribunal determined that it was reasonable to grant an order.

59. The Tribunal took into account the Respondent's evidence that she would require some time to find a property and make arrangements to move in the event that an eviction order was granted. The Tribunal considered that given the size of the property, the fact that there were 2 young children in the property and the practicalities of making arrangements to find an alternative property– it would be reasonable to suspend enforcement of the eviction order until 30 April 2025.

60. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.

Decision

61. In all circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above, and the appeal period of this Decision

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.

Andrew Cowan

17th March 2025

Legal Member/Chair

Date