

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/0554

Re: Property at 26 Thornyflat Place, Ayr, KA8 0NE (“the Property”)

Parties:

**Mrs Norma Bell, Mr Kevin Bell, 11 Auchendarvie Place, Stevenston, KA20 4AE
 (“the Applicants”)**

Miss Shelby McAllister, 26 Thornyflat Place, Ayr, KA8 0NE (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. The Applicants are the proprietor of the Property. The Respondent is their tenant. The lease has been misplaced. It is clear, however, that there is a tenancy agreement in existence and, in written representations to the Tribunal, the Respondent pointed out that she has always made payment of rent when due. The lease is a Private Residential Tenancy.
2. The Applicants served a notice to leave upon the Respondent indicating that they wished recovery of the Property as they intended to sell it. It was indicated that the need for the sale was due to the fact that repairs were required to the house in which the Applicants are living and they require to realise the funds from the Property to cover the cost of repair.

3. The Applicants also advised that the need for repair of their existing house arises due to the ill health of Mr Bell in particular. Certain medical information was provided to the Tribunal highlighting various issues relating to him.
4. In advance of the Case Management Discussion the Respondent lodged written representations with the Tribunal. Those representations, briefly, queried the nature and extent of the medical issues affecting Mr Bell and also put into sharp focus the issue of reasonableness, making reference to health issues suffered by two of the three children of the Respondent.
5. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
6. At the case management discussion, which was held on 19th June 2023, the Tribunal adjourned proceedings to a hearing.

THE HEARING

7. The Applicants both participated in the Hearing. The Respondent participated and was also represented by Mr David Anderson of Ayr Housing Aid Centre.
8. Between the Case Management Discussion and the Hearing further submissions and documents were lodged by both Parties. The submissions and documents lodged made the following clear:-
 - a) Mr Bell, one of the Applicants, does have significant health issues including chronic obstructive pulmonary disease.
 - b) The Property in which the Applicants currently reside is in need of repair and, in particular, has a significant issue with mould.
 - c) The Applicants intend to sell the Property to realise funds to, amongst other things, pay the cost of the necessary work to the home in which they are currently residing.
 - d) The work at their home is necessary and the treatment of the issue with mould, in particular, is likely to be of benefit to Mr Bell having regard to his medical condition.
 - e) The Respondent has 3 children, two of whom suffer from autism. Those two children are aged 9 years and 13 years. There is a younger child also.
 - f) The two children who suffer from autism both attend a local school which has specialism in dealing with autistic children.
 - g) The Respondent is anxious to secure alternative accommodation in the local area to minimise upset and disruption to those children and to ensure continuity in their education.
 - h) The Respondent has already engaged with South Ayrshire Council to secure alternative local authority accommodation. The Respondent is engaging with Ayr Housing Aid Centre to obtain assistance with relocating.

9. At the outset of the hearing the Applicants confirmed that they do wish the Tribunal to grant an order for eviction. They accepted that any order granted would be subject to the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“COLA”) and, accordingly, any order granted would not be able to be enforced for a period of 6 months.
10. Mr Anderson, for the Respondent, addressed the Tribunal in a pragmatic manner. While accepting the competing health issues of the Parties, he, on behalf of his client, accepted that it was likely that an eviction order would be granted as the current situation cannot continue indefinitely. He acknowledged that eviction would be subject to COLA. He highlighted the fact that his client has been engaging with the local authority and his organisation have been assisting with that. His concern, on behalf of his client, was ensuring that sufficient time was afforded to his client to enable suitable accommodation within the local area to be offered to his client to ensure the minimum disruption possible for the family and, in particular, the two autistic children.
11. He submitted to the Tribunal that, if an order for eviction was to be granted, the date on which it can be enforced should be extended beyond the 6 months which would be required by COLA and ultimately suggested that an extra 2 months would be appropriate. He highlighted, however, that his client is actively seeking alternative accommodation and he hoped that the local authority would be able to offer that much sooner than 8 months from now but, to ensure the best interest of his client, he was seeking such an order from the Tribunal.
12. Mr and Mrs Bell opposed any extension to the date of enforcement of any order for eviction. They pointed out that the case has already been ongoing for some time and highlighted their own needs.
13. The Tribunal clarified with both parties that, from the submissions which had been made, there was agreement that an eviction order would be granted, the only point of dispute is the date upon which it would become enforceable. Parties agreed that was, indeed, the only point of dispute.
14. The Tribunal, having adjourned to consider its decision, thereafter granted an order for eviction, as was agreed between the Parties, and ordered that the date upon which it may be enforced, if necessary, would be 29th March 2024.

REASONS FOR DECISION

15. There is no doubt that there were significant medical issues in relation to both Parties to be taken into account in determining what is reasonable and in determining the interest of both Parties. There is no dispute that Mr Bell has significant medical issues. There is no dispute that two of the children of the Respondent suffer from autism and there are significant issues which, of course, arise from managing those children on a day to day basis.
16. There is no doubt that the Applicants wish to sell the Property to realise funds for, amongst other things, the upgrade of their existing home. That upgrade is required and will undoubtedly be of significance having regard to the medical issues suffered by Mr Bell in particular.
17. As a matter of law, any eviction order granted would not be able to be enforced until 22nd January 2024, having regard to the terms of COLA. While the Applicants were understandably unhappy that there would be such a delay, the Tribunal must, of course, comply with the law and the Applicants, of course, accepted that to be the case.
18. In those circumstances, the only issue arising for determination by the Tribunal was whether the date for enforcement of any eviction order should be left as a period of six months in accordance with COLA or whether the Tribunal should allow a longer period to afford the Respondent further time, if necessary, to secure alternative accommodation.
19. In considering this matter, the Tribunal had regard to the competing interests of the Parties. The desire of the Respondent to minimise disruption for her two elder children was understandable. Her desire to remain within the local area and to ensure continuity of schooling was understandable. The Respondent has already been in contact with the local authority with a view to seeking alternative accommodation and it is hoped that alternative accommodation will be made available sooner rather than later.
20. Were the Tribunal to grant an eviction order and leave the date of enforcement to be in accordance with the provisions of COLA, as previously stated, that would enable an eviction to be forced on 22nd January 2024. The Tribunal, however, requires to consider matters realistically. Given that time of year is shortly after the festive period, the likelihood of anything meaningful being done from mid/late December until early January in terms of the local authority identifying, offering and making available suitable accommodation is likely to be low. Separately, if an eviction was to be forced at that time it would, of course be during the winter months and, having regard to the ages of the Respondent's children, the Tribunal did not

consider it to be reasonable for such a date to be the effective date upon which an eviction could be enforced.

21. Mr Bell has medical issues. He is residing in another Property and will continue to do so. The Tribunal cannot reduce the 6 month enforcement period contained within COLA. Whatever decision the Tribunal makes, therefore, the Applicants' position may remain the same for a period of at least 6 months. While the situation is far from perfect, an extension of the 6 month enforcement period for a relatively short period is unlikely to make a material difference to the position of the Applicants.
22. The Tribunal, in the circumstances, did consider it appropriate, balancing the interest of the Parties, to allow a further period to enable the Respondents to be allocated local authority accommodation if it had not already been offered prior to 22nd January 2024. In assessing the appropriate period, the Tribunal considered that a period of an additional 2 months would be reasonable and the total period before which an eviction could be enforced extended to 8 months.
23. The Tribunal noted the school term dates for South Ayrshire Local Authority. The school Easter holiday runs from Friday 29th March 2023 until Monday 15th April 2023. The Tribunal considered that, if an eviction was to be enforced, it was appropriate that it be done at a time when the children of the Respondent would be off school and to minimise disruption to them.
24. The Tribunal acknowledged that the Applicants would be unhappy with its decision. The Tribunal acknowledges that the Applicants are keen to have the Property marketed for sale to realise funds as soon as possible. The Tribunal acknowledged that, according to the Applicants, they are losing money on a weekly basis from the Property. The Tribunal, however, required to balance the competing interests of both parties and that, for the reasons stated, the decision was considered appropriate.

DECISION

The Tribunal grants an order against the Respondent(s) for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Schedule 3 of said Act.

Order not to be executed prior to 12 noon on 29th March 2024

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.

V Crawford

21 July 2023

Legal Member/Chair

Date