



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/0353

Re: Property at 18 McKellar Avenue, Ardrossan, KA22 7AS (“the Property”)

Parties:

Anne McMail T/A McMail Properties, 17-19 Hill Street, Kilmarnock, KA3 1HA (“the Applicant”)

Ms Savannah Knowles, 18 McKellar Avenue, Ardrossan, KA22 7AS (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy Agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a “terms of engagement” letter from a solicitor. The application is based on ground 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer. Both parties were notified that a case

management discussion (“CMD”) would take place by telephone conference call on 17 May 2023 at 2pm, and they were required to participate. Prior to the CMD, the Respondent’s representative notified the Tribunal that neither he nor the Respondent were able to participate in the CMD. He stated that the CMD should proceed in their absence, that the Respondent does not oppose the application and is receiving assistance to source alternative accommodation.

3. The CMD took place on 17 May 2023. The Applicant was represented by Ms Raynor. The Respondent did not participate.

Case Management Discussion

4. Ms Raynor told the Tribunal that the Applicant is in the process of reducing her portfolio of properties and has decided to sell. Another property was recently sold, and an offer has been accepted for a third. A fourth property is being refurbished prior to being sold. She said that the Applicant has other business interests and intends to reduce the portfolio in order to focus more on the other businesses. The Respondent has been in regular contact and is understood to be looking for another property. She resides at the property with a school age child. There are no rent arrears or other tenancy related issues. Ms Raynor said that she believes that the Respondent is in receipt of benefits and is unaware of any health or other issues affecting the household.

Findings in Fact

5. The Applicant are the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
7. The Applicant is entitled to sell the property.
8. The Applicant intends to market the property for sale when it becomes vacant.
9. The Respondent does not oppose the application and is receiving assistance to find alternative accommodation.

Reasons for Decision

10. The application to the Tribunal was submitted with a Notice to Leave dated 4 November 2022 together with post office certificate and track and trace report which establish that the Notice was sent on 4 November and delivered on 5 November 2022. The Notice to leave states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can

be made is 30 January 2023. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

11. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 1 of Schedule 3 (as amended by section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022) 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 ”
12. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell it. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicant intends to market the property for sale when it becomes vacant. She has instructed solicitors to sell the property on her behalf.
13. The Tribunal noted that the Applicant wishes to sell the property because she is reducing her portfolio in order to focus on other business interests. Other properties are also being sold. The Tribunal also noted that the Respondent does not oppose the application and is hoping to secure alternative accommodation for herself and her child. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
14. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

Decision

15. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

17 May 2023