



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/22/3089

Re: Property at 4/17 Anchor Mill, Thread Street, Paisley, PA1 1JR (“the Property”)

Parties:

Mrs Kirsten Kilgour Oldfield (formerly Frew), Pages Farm, 47 High Street, Hail Weston, St Neots, PE19 5JW (“the Applicant”)

Mr Alan James Tiberius Powell, 4/17 Anchor Mill, Thread Street, Paisley, PA1 1JR (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, dated 25 August 2022 and received by the Tribunal on 29 August 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.

The application was accompanied by copies of a document called a Licence to Occupy between the Parties, with an entry date of 29 September 2021, under which the Respondent was obliged to pay a Licence Fee of £1,000 per month and other charges including factoring charges. The Licence to Occupy was to continue to the earlier of (a) the date of entry in terms of missives for purchase of the Property by the Respondent or (b) 28 February 2022. The Applicant also provided a copy of a letter from the Applicant’s solicitors to the Respondent of 24 January 2022, increasing the Licence Fee to £1,200 per month from 28 February 2022 and extending the period contract from 28 February 2022 to 28 April 2022 or, if earlier, the date of entry in terms of missives for purchase by the Respondent. It was

explained in the application that the intention had been for the Respondent to purchase the Property and it had been agreed in September 2021 that he could rent it until he was able to arrange a mortgage, the deadline for which had been extended from 28 February 2022 to 28 April 2022.

The Applicant also provided copies of a Notice to Leave, dated 27 May 2022, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 20 August 2022, and a letter, dated 24 May 2022, from Cochran Dickie, solicitors, Paisley, confirming that Cochran Dickie Estate Agents had been instructed to re-market the Property for sale immediately after the Respondent vacated the Property and that they had been instructed in the conveyance of the Property thereafter.

On 14 November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 5 December 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 6 March 2023. The Applicant was represented by Mrs Jennifer Cochran of Cochran Dickie, solicitors, Paisley. The Respondent was not present or represented.

The Applicant's solicitor told the Tribunal that her understanding was that the Respondent lived full-time in the Property. During the past week, he had been in touch with the Applicant stating that he still hoped to purchase the Property, but the Applicant's position was that she wished an Eviction Order to be issued, as there was no certainty that a sale would go ahead. No offer had as yet been received. She stated that no rent had been paid since the April 2022 deadline and that the Applicant was owed £14,468.80 by the Respondent in unpaid rent and factoring charges.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that

intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal was satisfied that the Licence to Occupy met the requirements of Section 1 of the 2016 Act, in that the Respondent occupied the Property as his only or principal home, with the consequence that, despite its title, it was a Private Residential Tenancy. Accordingly, the Tribunal had jurisdiction to hear the application. The Tribunal was also satisfied that the requirements of Ground 1 in respect of service of the Notice to Leave had been complied with and that the Applicant intends to sell the Property. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of those facts.

The Tribunal noted that the intention of the Applicant had, all along, been to sell the Property and the Respondent, as the potential purchaser, was well aware of this fact. The Applicant had also provided the Tribunal with evidence of her intention to sell, namely a letter from her solicitors confirming that Cochran Dickie Estate Agents had been instructed to market the Property as soon as it became vacant and that they had been instructed to complete the conveyancing procedures.

Having considered carefully all the evidence before it, the Tribunal decided that the Applicant established to the Tribunal's satisfaction that it would be reasonable to issue an Eviction Order.

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.



**George Clark
Legal Member/Chair**

**6 March 2023
Date**