



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/1395

Re: 165 Oldwood Place, Eliburn, Livingston, EH54 6UX ("the Property")

Parties:

John Brown and Patricia Brown residing at 13 Birrell Gardens, Murieston, Livingstone, EH54 9LF ("the Applicants")

Craig Gowdy residing at 165 Oldwood Place, Eliburn, Livingston, EH54 6UX ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member) and Mary Lyden (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 2nd May 2023. The application states that the ground for eviction was as follows:

'Ground 1: The Landlord intends to sell the Let Property- Due to illness (Stress, Depression and High Blood Pressure). He can no longer manage the properties that he owns and continue to work as well. He was off work from February 2022 to February 23 and since returning to work he has been on reduced hours. All fitness to work certificates from the Doctor can be provided.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement. The commencement date of the tenancy was 1st November 2021.
- Notice to Leave dated sent to the Respondent by email on 3rd February 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 1st May 2023.
- Email from the Applicant to the Respondent attaching the Notice to Leave dated 3rd February 2023.
- Email from the Applicant John Brown to West Lothian Council attaching the Section 11 Notice dated 31st May 2023.
- Section 11 Notice.
- Email from Carol Nicol of Knight Bain Estate Agents to the Applicant John Brown dated 31st May 2023 confirming that Knight Bain Estate Agents have been instructed to market the Property 165 Oldwood Place, Livingston.

2. This case called for a conference call Case management Discussion (CMD) at 10.00 on 8th September 2023.

The Applicant and the Respondent attended the CMD.

2.1 Oral Evidence

2.1.1 Oral Evidence of John Brown.

Mr Brown explained that he is 57 years of age and he first became ill in December 2021. He became ill again in February 2022 and was then signed off work due to stress and anxiety. He is employed as a project manager. He returned to work in February 2023. He is struggling to work and manage his rented properties. He was prescribed medication for anxiety and depression. He is happy to provide copies of medical certificates if required. He returned to work in February 2023. It was a phased return. He started at one day per week and this increased to two and a half days per week. He is struggling and is talking to his employer about terminating his employment. He sold his home and has moved into one of his other rented properties at 169 Oldwood Place. When he sold his home he used the free proceeds to pay off the mortgage over 169 Oldwood Place. He owns three properties in total. He proposes to sell the two rented properties in phases so that he is not placed under too much pressure. There is a mortgage over the Property 165 Oldwood Place. The rent is approximately £60 per month more than mortgage payments. However, once he takes account of other costs such as insurance the rent just about covers the costs of the Property. There are no rent arrears. He finds the whole process of renting out his properties to be very stressful, in particular dealing with the rents, insurance and accounts. The Respondent has sent him a number of text messages which he also found to be stressful.

2.1.2 Oral Evidence of Craig Gowdy.

Mr Gowdy explained that he is 47 years of age and resides in the Property alone. The Property is a two bedroom property. The rent charges are £675 per month and he receives universal credit payments of £490 towards the rent. He makes up the shortfall. He owned a business and in December 2021 suffered medical problems. He

had been on a surgical waiting list for over a year and the procedure had been delayed. It is now scheduled to take place next week. It will take him three weeks to recover from the procedure. He is also happy to provide medical evidence, if required. He has been on sick leave since May 2023 and hopes to return to work by Christmas. He has tried to find alternative accommodation but has been unsuccessful. The rents of properties he has been looking at are higher, in the region of £900 per month. He advised the Tribunal that Mrs Brown is a joint landlord of the Property but only Mr Brown is a registered landlord. He also pointed out to the Tribunal that the Applicants have not brought the application under the grounds that they intend to sell the Property as they are suffering financial hardship. He has advised the Landlords of a number of repairs required to the Property including a defective rear patio door, the absence of the Gas Safety Certificate and no Legionnaires Certificate. Mr Gowdy advised that the text messages he sent to Mr Brown were not threatening. He was advising him of the repairs required.

3. The Tribunal made the following findings in fact:

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy detailed in the lease was 1st November 2021.

3.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.3. The Applicants, John Brown and Patricia Brown, are Landlords of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate WLN21555. Section B of the Land Certificate confirmed that the Applicants purchased the Property on 5th February 2007.

3.4 Clause 3 of the lease states that the Landlord and the Tenant agree that all communications under the act, including Notices, will be made in writing using the email addresses set out in the lease.

3.5 The Notice to Leave was emailed to the Respondent on 3rd February 2023, using his email address detailed in the lease.

3.6 The Notice to Leave stated that the Landlords intend to sell the Let Property, which is Ground 1 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016, and that the Applicants would not apply to the Tribunal for an eviction order before 1st May 2023.

3.7 The Applicants intend to sell the Property once they gain vacant possession.

3.8 The Applicants have instructed Knight Bain Estate Agents to act for them in connection with the sale.

3.9 The Applicants sent the section 11 Notice to West Lothian Council on 31st May 2023.

4. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and landlord registration number of Mr Brown.
- (ii) the name and address of the Tenant.
- (iii) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The email from Knight Bain, Estate Agents dated 31st May 2023 was sufficient in its terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was sent to the Respondent on 3rd February 2023 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 1st May 2023.

The Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Landlord served the Notice to Leave on the Tenant by email and correctly gave the Tenant a minimum of eighty four days notice.

Clause 3 of the tenancy agreement states that notices to be served in terms of the lease will be made in writing using the email addresses detailed in the lease. The Notice to Leave had been sent to the Respondent using the email address detailed in the tenancy agreement.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Applicant, as required by Section 109(c) of the Procedure Rules.

5. Decision

5.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.1.1 The Tribunal had a copy of the Landlord's title (WLN21555) and established that the Applicants are the heritable proprietors of the Property and they are entitled to sell the Property.

5.1.2 Evidence had been provided that the Applicants intend to sell the Property. The Tribunal accepted the following evidence:

5.1.2.2 The email from Knight Bain, Estate Agents dated 31st May 2023.

5.1.2.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once he obtains vacant possession.

5.2 The Tribunal decided that it had been provided with sufficient information and evidence to enable them to make a decision. The Tribunal accepted the oral evidence of the parties as to their medical conditions.

5.3 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal accepted the evidence of the Mr Brown that he found the process of leasing out the Property added to his stress and that he needed to sell the Property to help reduce his stress levels. The Tribunal found that this was consistent with other actions taken by the Applicant to reduce stress namely to sell his own home, to reduce his mortgage commitments and to negotiate with his employer to terminate his employment. The stress being experienced by the Applicant was having a significant impact on the Applicant.

The Tribunal also accepted the evidence of Mr Gowdy that he will take over three weeks to recover from the surgical procedure the he will undergo next week and he would be placed under significant stress if he was forced to vacate the Property before he had recovered. The Tribunal also accepted his evidence that he is having difficulty finding alternative accommodation.

The Tribunal found that the weight of evidence was in favour of the eviction being granted as the Respondent will recover from his procedure and he will be able to find alternative accommodation with the assistance of the Local Authority however the Applicants were having to make permanent adjustments to cope with Mr Brown's medical condition which includes selling the Property.

5.4 The Tribunal acknowledged that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the application was received by the Tribunal after 28th October 2022. These provisions mean that an order cannot be enforced for the eviction of the

Respondent until the earlier of 6 months or the expiry or suspension of the Cost of Living (Tenant Protection)(Scotland) Act 2022. The provisions are due to expire on 30th September 2023 but are expected to be extended to 31st March 2024. Due to the uncertainty around whether or not the provisions will be extended they determined that the earliest date the Order could be enforced is 31st October 2023.

5.5 Therefore the Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on earlier of (a) the day following the end of a period of 6 months beginning with 8th September 2023, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ('the date of expiry or suspension'), but if that date of expiry or suspension is 30th September 2023 the date of 31st October 2023.

6. 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.



Legal Member

8th September 2023