



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/22/2864

Re: Property at 22 Cramond Place, Irvine, North Ayrshire, KA11 1HD (“the Property”)

Parties:

Mr Kenneth Rogers, 215 Hurst Road, Sidcup, Kent, DA15 9AL (“the Applicant”)

Mrs Joanna Goddard, 22 Cramond Place, Irvine, North Ayrshire, KA11 1HD (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The end date for the tenancy is set for 31 January 2023. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 15 August 2022 under Ground 1 of schedule 3 of the Act.
2. It was accepted by the Tribunal on 9 September 2022.
3. The following documents were lodged by the Applicant to support the application:
 - a. Copy Private Residential Tenancy (PRT) commencing 19 December 2019 for the property
 - b. Notice to Leave dated 9 February 2022 with confirmation of service on the Respondent by email on that date.
 - c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 15 August 2022.

- d. email 16 August 2022 to Homesure Property Management confirming Applicant's intention to sell the property.
4. The Case Management Discussion (CMD) was scheduled for 25 November 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 23 October 2022. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No representations from the Respondent were received by the Tribunal.
6. The case documents are referred to for their terms and held to be incorporated herein.

B: The Case Management Discussion:

7. The CMD took place on 25 November 2022 by telephone conference call.
8. The Applicant was represented by Mr Hall from Homesure Property Management and did not attend. The Respondent attended.
9. Mr Hall explained that Ms Goddard had been an excellent tenant and there were no issues at all. He explained that the Applicant is 78 years of age and retired. The Applicant has 5 properties and one has already been sold, this one and another one are currently subject to proceedings before the Tribunal and another two were currently on the market. Due to their retirement the Applicant and his wife are now requiring to sell all the properties. This property is subject to a mortgage which will run out in April 2023 and they have explored options but due to his age the Applicant cannot obtain further financing in terms of a mortgage and thus requires to sell the property. Obviously the Applicant would wish to facilitate that Ms Goddard could move into a new property directly without the requirement for temporary accommodation and the landlord would wish to ensure there is time for her to find appropriate accommodation.
10. Ms Goddard she has no objection to the application and fully understands that the landlord requires to sell the property due to his personal circumstances. She had been trying to find alternative accommodation since she was told about the intention to sell and has already made an application to the Council and is working with a Housing Officer. She has 4 children and she is in work. She feels that the property now no longer is a home and she fully understands the position of the Applicant. She has no concerns about housing issues following the contact with the Council and she moved around Christmas on previous occasions. The Housing Officer told her she would receive accommodation and she had agreed to let them know immediately once she knew the outcome of the proceedings today. 2 months before the end date 150 points are added to the housing waiting list points.

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 19 December 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The Applicant owns the property and is entitled to sell it.
4. The tenancy is ongoing.

5. On 9 February 2022 the Applicant served a Notice to Leave on the basis of ground 1 of schedule 3 of the 2016 Act on the Respondent by email.
6. The Notice to Leave states as the date when proceedings can be raised the date of 13 August 2023.
7. The notice required under S 56 of the Act was issued to the local authority on 15 August 2022.
8. The Applicant requires to sell the property as the mortgage term expires in April 2023 and due to his age, 78, he is not able to find further financing to keep the property.
9. He intends to put the property on the market as soon as it becomes vacant.
10. The Respondent had knowledge of this intention since February 2022.
11. The Respondent resides in the property with 4 children. She is employed and a single mother.
12. She is waiting to be re-housed by the Council and has already made an application and has been in discussion with her Housing Officer, who states she needs to provide the decision of the Tribunal. She will call the Housing Officer with the date as soon as this is available.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
- (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

- (i) correcting; or
- (ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Ground 1 Landlord intends to sell

1(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, and

(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.

(3) 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.

2. There was no dispute regarding the facts in the case. Both the Applicant and Respondent appreciate each others' situation. The Respondent did not raise any objection to the application and is in the process of identifying alternative accommodation.

3. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by both parties at the CMD.

4. In terms of S 54 of the Act a 6 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act. The Notice to Leave part 4 entry of 13 August 2022 is technically incorrect as the calculation in terms of S 62 (1)(b), (4) and (5) and S 64 would identify the date of 12

August 2022, but the provision of para. 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 allows the Tribunal to disregard this small error.

5. The Tribunal found that Ground 1 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Applicant had set out the situation and reason for the sale in the representations of Mr Hall given to the Tribunal and the Respondent fully accepts that the Applicant has a genuine reason to sell the property as the mortgage runs out and he is not able to refinance it due to his age. The Tribunal was satisfied that the Applicant will put up the property for sale within 3 months of it becoming vacant.

6. The Applicant has given the Respondent ample notice to find alternative accommodation.

7. The Respondent also has children and is a single mother. She has made efforts to find alternative accommodation. She also stated she appreciates that the Applicant genuinely requires to sell the property and she has no objection to the eviction order being granted. She advised that that without an eviction order from the Tribunal the Council would not re-house her.

8. The Tribunal also noted that Mr Hall on behalf of the Applicant assured the Respondent that even if an order was granted there would be flexibility from the Applicant to attempt to ensure that she could move into alternative rather than temporary accommodation.

9. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 1 of schedule 3 of the Act but that the Respondent should be given until 31 January 2023 to remain in the property and to maximise her chance to be allocated suitable alternative accommodation by the Council, taking into account that some of that period falls around Christmas and New Year, when there may be a delay in things progressing. This time scale also allows for the Applicant to commence marketing the property prior to the mortgage period ending.

10. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

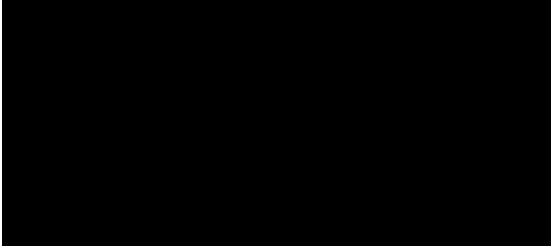
11. The Tribunal, having regard to the appeal period and to the position of both parties, determines that in terms of S 51(4) of the Act the tenancy ends on 31 January 2023.

E: Outcome

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 of Schedule 3 of the Act and sets an end date for the tenancy for 31 January 2023.

F: 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/Chair

25 November 2022

Date