

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/22/4036

Re: 89 Heatherstane Way, Irvine, KA11 1DU ("the Property")

Parties:

Kenneth Rogers, 215 Hurst Road, Sidcup, Kent, DA15 9AL ("the Applicant")

Homesure Portfolio Management, Unit B5, Olympic Business Park, Drybridge Road, Dundonald, KA2 9BE ('The Applicant's Representatives')

Laura O'Halloran residing at 89 Heatherstane Way, Irvine, KA11 1DU ("the Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) Helen Barclay (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 4th November 2022. The application states that the ground for eviction was as follows:

Ground 1: The Landlord intends to sell the Property.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 27th October 2018. The commencement date of the tenancy was 31st October 2018.

- Notice to Leave dated 4th August 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 3rd November 2022.
- Email from the Applicants' Representative to the Respondent dated 4th August 2022 attaching the Notice to Leave.
- Email from the Applicants' Representative to North Ayrshire Council attaching the Section 11 Notice.
- Section 11 Notice.
- Email from the Applicant and Frances Rodgers to their Representatives dated 28th November 2022 advising that (1) when the Property becomes vacant they intend to sell the Property as their mortgage ends in May 2023 and it will not be extended due to their ages which are 77 and 78 and (2) Frances Rodgers authorises Kenneth Rodgers to act as sole Landlord.

2. The First Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 10th March 2023.

The Applicant did not attend the CMD but their representative Alan Hall of Homesure Portfolio Management attended on his behalf.

The Respondent attended the CMD.

No written responses had been received from the Respondent.

2.1 Oral Evidence

2.1.1 Mr Hall advised the Tribunal that Mr Rodgers is in his 80's, his mortgage is coming to an end and he needs to sell the Property. He explained that this is a genuine scenario. His company will be acting in connection with the sale. He read an email to the Tribunal that he had received from Mr Rodgers dated 28th July 2022 but he accepted that the email did not specifically confirm that his company had been instructed to act in connection with the sale of the Property.

2.1.2 Mrs O'Halloran advised the Tribunal that she is on the Council's housing list and she resides in the Property with her two children. She has been told that her application to the Council for rehousing is a priority application.

3. Outcome following the First Case management Discussion.

3.1 .Requirements of Section 109 of the Procedure Rules.

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

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenant.
- (iv) 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 determined that the requirements of Section 109(b) of the Procedure Rules had not been met in full:

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

The Tribunal found that insufficient evidence had been produced to the Tribunal evidencing that the Landlord intended to sell the Property. They noted that the Applicant's Representative had been asked to provide this evidence by email dated 24th November 2022.

(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 dated 4th August 2022 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 3rd November 2022.

The Tenancy commenced on 31st October 2018. As at 4th August 2022 (the date of the Notice to Leave) 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. The Landlord had served the Notice to Leave on the Tenant by email and correctly gave the Tenant a minimum of eighty four days notice.

(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 Landlords' representatives as required by Section 109(c) of the Procedure Rules.

3.2 The Tribunal determined that the application should proceed to a continued CMD.

4. Additional Productions.

The Applicant's Representative provided the Tribunal with a copy of a Sales Agreement between the Applicant and Homesure Portfolio Management in relation to the sale of the Property dated 20th March 2023.

5. The Second Case Management Discussion.

5.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 5th June 2023.

The Applicant did not attend the CMD but his representative Kim McKenzie of Homesure Portfolio Management attended on his behalf.

The Respondent did not attend the CMD. She had been sent details of the CMD by email dated 5th May 2023 and accordingly the Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

No written responses had been received from the Respondent.

5.2 Kim McKenzie advised that since the first CMD the Applicant's mortgage had come to an end but the mortgage provider had allowed a temporary extension to allow him time to sell the Property. She also clarified that the Respondent had been in touch with the Council's homeless unit and was waiting to be allocated a property. She confirmed that the Property had not been adapted for the Respondent's needs.

6. Decision

6.1 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:

6.1.1 The Tribunal had a copy of the Landlord's title AYR18200 and established that the Applicant is heritable proprietor of the Property and he is entitled to sell the Property.

6.1.2 Evidence had been provided that the Applicant intends to sell the Property being the Sales Agreement between the Applicant and Homesure Portfolio Management in relation to the Property dated 20th March 2023.

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

6.2 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 found that it was reasonable for the eviction order to be granted given the fact that the Appellant's mortgage is coming to an end and he requires to sell the Property due to his age and also the fact the Respondent has applied for alternative housing and at the first CMD she explained that her application is a priority application.

6.3 The Tribunal also found 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.

6.4 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 6th December 2023 or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

7. 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.

Jacqueline Taylor

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Legal Member

5th June 2023