



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/23/0669

Re: Property at 78 Dykehead Road, Airdrie, ML6 6SZ (“the Property”)

Parties:

Rev. Andrew Quigley, 340 Garden Glen, Nepean, Ottawa, K2G 1E4, Canada (“the Applicant”)

Ms Bonnie Fagan, 78 Dykehead Road, Airdrie, ML6 6SZ (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and David MacIver (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Application for an eviction order.

Background

1. This is an Application for an eviction order in regard to a Private Residential Tenancy ("PRT") in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) ("the Rules"). The PRT is between the Parties and relates to the Property. The tenancy commenced on 16th January 2020.
2. The Application was dated 31st January 2023. This makes the Application subject to the Cost of Living (Respondent Protection) (Scotland) Act 2022.
3. The application relies upon a Notice to Leave dated 11th October 2022, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by Sheriff Officers on 17th October 2022, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in that "the Applicant intends to sell". In regard to that ground the body of the notice explained that the Applicant wished to sell the property in Spring 2023. It further explained that the Applicant had approached Igloo estate agents (Igloo) and had instructed those agents to market the Property

for sale. The Notice to Leave intimated that an application to the Tribunal would not be made before 15th January 2023.

4. The Application papers included a copy of a sales valuation for the Property, dated and prepared in July 2022. It also included a number of emails between the Applicant and Igloo wherein the Applicant had set out his reasons for wishing to sell the property. The Application also included emails between Igloo and the Respondent in relation to the Applicant's intention to sell the property. These emails included an email dated 16th September 2022 in which Igloo advised the Respondent that, as the Applicant was preparing for retirement, he was starting to sell his rental properties, and that he had already sold some of his other rental properties.
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council on 28 February 2023 was included in the Application papers.
6. In response to the terms of the Application the Respondent lodged a written note of matters that she wished to highlight to the Tribunal. That note was dated 12th June 2023.
7. On the day before the CMD hearing both the Applicant and Igloo lodged further written submissions in support of the Application. The Tribunal declined to accept those further written submissions as they had not been intimated to the Respondent in advance of the CMD. Given, however, that parties were invited to address the Tribunal at the CMD in relation to the merits of the Application, the Applicant and Igloo were given an opportunity to address the Tribunal at the CMD on matters which they considered relevant to the determination of the Application.

The Hearing

8. The matter called for a CMD of the First-tier Tribunal for Scotland, Housing and Property Chamber, conducted by remote telephone conference call, on 30th June 2023 at 14:00. The Tribunal were addressed by the Applicant and his letting agent, Ms Donna Marie Stewart of Igloo estate agents. The Tribunal were also addressed by the Respondent.
9. At the CMD, the Applicant confirmed that the application for eviction was insisted upon. He explained that he currently lived, and worked, in Canada. He wishes to sell the Property as he begins to prepare for retirement. The Applicant explained that, having worked abroad for a significant period, his expected state pension at retirement was expected to be significantly less than a "normal" state pension. The Applicant further explained that he had a portfolio of 10 properties. He has sold a further 4 properties over recent years. He had selected the Property to be sold at this time as it was one of two properties which he owned which were subject to an "interest only" mortgage. The monthly mortgage payments on this property were significantly higher than in relation to other properties that he owned. The monthly rent due in terms of the tenancy agreement between the parties was £400, whilst the mortgage payments and other costs paid by the Applicant were, following recent increases in interest rates, in excess of £600. The Applicant did not consider that it was financially viable to continue to let the Property. He had instructed Igloo estate agents to have the property valued with a view to selling the property in Spring 2023. He had delayed in marketing the property for sale as he wished to be able to give the Respondent an opportunity to source alternative accommodation in advance of that sale.

10. The Applicant's agent confirmed that the Applicant still sought eviction in normal terms and understood that eviction, if granted, may be suspended as long as a further six months in terms of the 2022 Act.
11. The Respondent confirmed to the Tribunal that she accepted that the Applicant had a genuine intention to sell the Property.

Findings in Fact and Law

12. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 16th January 2020 ("the Tenancy"). The rent charged under the tenancy agreement was, and remains, at £400 per month. That rent, as agreed between the parties is significantly lower than average open market rents for properties of a similar type and location to the Property.
13. The Applicant has issued a Notice to Leave dated 11th October 2022 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by Sheriff Officers on 17th October 2022.
14. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 31st January 2023.
15. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on the Applicant's behalf on 28 February 2023.
16. The Applicant is entitled to sell the let property and he intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the property.
17. It is not reasonable to issue an eviction order.

Reasons for Decision

18. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
19. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) ...the Applicant intends to sell the let property.
 - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the Applicant-
 - (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 Respondent 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 Applicant 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.

20. The Tribunal were satisfied, on the uncontested evidence provided, that the Applicant is entitled to sell the let property and that he intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the property. On that basis the Tribunal agreed that paragraphs (2)(a) and (b) were satisfied.
21. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph (2)(c).
22. The Applicant explained that he wishes to sell the Property in preparation for his retirement. The Applicant owns a total of ten properties, having sold a further four properties in the last three or four years. All the properties owned by the Applicant have mortgages over them. The Applicant selected the property at 78 Dykehead Road for sale as it is one, of only two properties, where he has an interest only mortgage. The monthly payments for that property are significantly higher than the mortgage payments he makes in relation to his other properties. Following a number of recent interest rate rises, the Applicant does not consider it economic to retain the Property as a let property. The mortgage payments that the Applicant is making in relation to the Property are almost double the mortgage payments he is required to make on other properties which he owns. The Applicant confirmed that the rental charged in respect of the Property is £400 per month. The Applicant further confirmed that he is making payments in excess of £600 per month towards mortgage interest payments, letting agent commission and factoring charges in relation to the Property. He does not consider it financially viable to retain the property for letting purposes. The Applicant further explained that he has worked outside the UK almost half of his working life and his understanding is that his state pension will be significantly less than the normal state pension. He indicated that he expected a state pension or retirement to provide him with approximately £2,800 per annum. He has no pension provision from his current ministerial job in Canada as he has chosen to take his pension provision as part of his salaried income. The Applicant currently resides in Canada with his wife and his daughter, who has learning difficulties. The Applicant is currently planning his retirement and wishes to ensure that he has maximised the financial provision for himself and his family upon retirement. He indicated that he has a limited current income and that his wife has had to return to work after forty years to support the family financially. The Applicant indicated that he has no other savings. The Applicant has not yet retired. He anticipates that he

will retire in the near future. In all of the circumstances the Applicant considered it reasonable that an eviction order should be granted.

23. The Applicants letting agent, Miss Stuart, advised the Tribunal that the Respondent currently had arrears of rent due to the Applicant in the sum of £2700. She noted that the Respondent was receiving Universal Credit which included a payment towards housing costs. Notwithstanding this, the Respondent had not made rental payments in October 2022, December 2022 or February 2023. She highlighted that the Respondent's rent arrears continue to rise. She further highlighted in October 2022, the Respondent was advised that another property was available to her in the locality of the Property. The Respondent had declined to accept that offer of an alternative tenancy.
24. The Respondent explained that she did not have sufficient resources to find and secure a suitable alternative home. The Respondent resides in the Property with her two children aged 10 and 4. The Respondent has joined the Local Authority housing waiting list but they have, as yet, been unable to find her suitable housing. The Respondent has looked for alternative privately rented accommodation but she is unable to find any that is affordable to her without putting herself into further financial hardship. The Applicant accepts that she was offered an alternative property by the Applicant but she was unable to accept this offer as the rent for that property was significantly higher than the current rent of £400 per month which she is paying in respect of her occupancy of the Property.
25. In the course of her evidence the Respondent explained that she has been the subject of domestic violence and continues to be supported by Women's Aid. One of her children suffers from anxiety and receives counselling. The Applicant also benefits from ongoing mental health support in relation to her own mental health difficulties. The Applicant has a fulltime job but was unable to work over a recent period due to ill health. This further exacerbated the Respondent's financial difficulties. The Respondent recognises that she has arrears of rent due to the Applicant and intends to pay the arrears of rent, as and when she is able. The Applicant receives Universal Credit on a monthly basis. Part of that Universal Credit is paid to assist her in making payments towards her rent. She receives further payments as a contribution towards childcare costs. The Applicant understood that were an eviction order to be granted, she may be given priority for housing by the Local Authority. The Respondent was concerned that if an eviction order was granted it would cause significant upheaval for her and her family together with further uncertainty and distress. She stated that she has significant concerns about the impact of the eviction on her family's wellbeing.
26. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having heard evidence from the parties and having considered the written representations lodged. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.
27. In determining whether it is reasonable to grant an eviction order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
28. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the Tribunal to grant the order

or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in 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 commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

29. The Tribunal accepted that both the Applicant and the Respondent provided their evidence in an open and honest manner. The Tribunal accepted that the Applicant was honest and genuine in his statement that he intends to sell the property. The primary reason the Applicant wishes to sell the property is to allow him to prepare for retirement. The Tribunal however noted that the Applicant has not, as yet, decided on the date that he will retire and that, in the meantime he remains in full time employment. The Tribunal further noted that the Applicant owns a number of properties any, or all, of which will be capable of being sold in due course to provide financial support to the Applicant when he finally retires. The Tribunal note that the Applicant's liabilities associated with the Property exceed the expected rental return. At the same time, however, the Tribunal noted that the Applicant had entered into a tenancy with the Respondent in which the Applicant had agreed to accept a rent which is significantly below the market rent for properties of a similar type and location to the Property.
30. The Tribunal noted that the Respondent occupies the Property with her two children. The Respondent has no alternative accommodation available and although she has made appropriate enquiries with all relevant local authorities and other housing providers there is no accommodation currently available to her and her family within the general locality of the Property. If the eviction order were to be granted she and her family would be rendered homeless. Such an order may have a significant impact on the education of her elder child who may be required to move school. The Tribunal has serious concerns regarding the detrimental impact that an eviction order could put upon the Respondent and her family.
31. In this case if an eviction order is granted a single parent and her family who are currently occupying a property which is entirely suitable for the needs would be rendered homeless. The order would allow the Applicant to sell the property and to reduce his financial liability for that property. The balance of reasonableness in this case is, however, weighted towards the Respondent. She has occupied this house for over 3 years. She, and her children, are settled there. The granting of an eviction order to remove them with its attendant upheaval would not be reasonable to allow the Applicant to prepare for his retirement in a situation where he has other properties to sell and where he has other options to address his concerns for retirement.
32. While the Tribunal accept that the Applicant has demonstrated his intention to sell the property, the Tribunal does not find that it would be reasonable to grant the order on account of that fact.

33. The decision of the Tribunal was unanimous.

Decision

34. In all the circumstances, we refuse to grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Andrew Cowan

Andrew Cowan

Legal Member/Chair

30th June 2023

Date