



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 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/21/0704

Re: Property at Braemore House, Meigle, Blairgowrie, Perthshire, PH12 8QX (“the Property”)

Parties:

Mr Lee Raymond Bushby, Mrs Sandra Helen Bushby, 3 Gwash Meadows, Ryhall, Rutland, PE9 4LB (“the Applicant”)

Mr Colin McKenzie-Stewart, Mrs Susan McKenzie-Stewart, Braemore House, Meigle, Blairgowrie, Perthshire, PH12 8QX (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property

Background

- 1. This is an application under Rule 109 of the 2017 Rules for an order of eviction. The application is dated 19th March 2021. A case management discussion was held on 19th May 2021.**
- 2. The Applicant had submitted an application for a payment order and a case management discussion on that application was dealt with at the same time.**

3. The case management discussion was conducted by audio conferencing.
4. Miss June McNicol, solicitor, appeared for the Applicant. Mr and Mrs McKenzie- Stewart were both present.

Preliminary Matters

5. The purpose of a case management discussion was explained to the parties. Ms McNicol said that she was seeking the eviction order to be made without the matter proceeding to a Hearing for determination.
6. Ms McNicol said she had received an email from a colleague dealing with the conveyancing of the Property which confirmed that an acceptable offer had been received from a purchaser. It was agreed that it would be useful for the Tribunal to have sight of a copy of this email and, after a short adjournment, it was produced.
7. Mr McKenzie -Stewart said that he had no evidence to lead on the matter.

8. Documents before the Tribunal:

8.1 The application dated 19th March 2021.

8.2 Notice to Leave dated 19th August 2020.

8.3 Notice under Section 11 Homelessness Etc. (Scotland) Act 2003 dated 3rd March 2021.

8.4 Copy Private Residential Tenancy Agreement with commencement date of 8th March 2019.

8.5 Sales brochure prepared by Savills, property agents, in respect of the Property.

8.6 Sasine search sheet showing the Applicant to be the owner of the Property.

8.7 Copy email from Ms Lizzie McFadzean of Messrs Anderson Beaton Lamond, solicitors for the Applicant dated 14th May 2021.

Findings in Fact

9. 9.1 The Applicant and the Respondent entered into a private residential tenancy agreement with a commencement date of 8th March 2019.

9.2 The Applicant has marketed the Property for sale and has received an offer from a prospective purchaser.

Findings in Fact and Law

10. 10.1 A valid notice to leave has been served on the Respondent by the Applicant.

10.2 The Respondent is entitled to recover the Property because it is being sold.

11. The Law

11.1 *Private Housing (Tenancies) (Scotland) Act 2016*

SCHEDULE 3 EVICTION GROUNDS

PART 1 LET PROPERTY REQUIRED FOR ANOTHER PURPOSE

Landlord intends to sell

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must 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.

(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.

11.2 Coronavirus (Scotland) Act 2020

Eviction from dwelling-houses

Section 2 Eviction from dwelling-houses:

Schedule 1 contains temporary modifications to the law in relation to the eviction of tenants from dwelling-house

Schedule 1

Schedule 3 of the Private Housing (Tenancies) Act 2016

(eviction grounds) has effect as if—

(a) in paragraph 1(2) (landlord intends to sell)—

(i) in the opening words, for the word “must” there were substituted “may”,

(ii) after paragraph (a), the word “and” were repealed,

(iii) after paragraph (b) there were inserted “, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

Reasons

- 12. The Tribunal saw no reason not to determine the application at the case management discussion. Mr McKenzie- Stewart indicated that there was no evidence which he would want to bring before the Tribunal.**
- 13. The Notice to leave gave a notice period of six months which the Tribunal noted to be appropriate. The application was dated after the expiry of the notice period. The appropriate notice had been given to**

Perth and Kinross Council in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

- 14. Mr McKenzie – Stewart said that he was aware that the Property was being marketed. He said that not only had he seen it on Savill’s website but he said that he and his wife had facilitated viewers to the Property. He said that he knew that the Applicant was marketing it.**
- 15. Ms McNicol said that the email from her colleague was indicative of the stage the selling process is at. The email stated *“We now have an offer in for Braemore House which the Bushbys have accepted. Can you please therefore keep me advised as regards the evicting process? My intention is to issue only a draft acceptance at present and not issue a formal acceptance until such time as the tenants have removed themselves.”***
- 16. Ms McNicol said that it was her understanding that the purchasers of the Property wanted to take entry at the end of June/ beginning of July 2021.**
- 17. The Tribunal had no difficulty in determining that the Property is being marketed. It had a sales brochure, it had the email from Ms McNicol’s colleague and it had the evidence of Mr McKenzie Stewart. It determined that the requirements of Schedule 3, Part 1, 1 (2)(b) of the 2016 Act to be met.**
- 18. In terms of Schedule 3, Part 1, 1(2)(a) of the 2016 Act, the Applicant requires to be entitled to sell the Property and the Tribunal was satisfied on this given the copy Sasine title sheet which it had and which showed the owner to be the Applicant.**
- 19. The 2016 Act states that the eviction ground 1 in Schedule 3 is mandatory, not discretionary. The terms of Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amends the terms of the 2016 Act and makes the ground discretionary. The 2020 Act requires the Tribunal to be satisfied that it is reasonable to grant the order of eviction.**
- 20. Assessment of reasonableness is a matter of balance and requires the Tribunal to consider the whole of the circumstances of the application.**
- 21. Mr McKenzie- Stewart accepted that there are rent arrears of £12,000 as a consequence of him losing his job at the outset of the pandemic.**

He said that he and his wife are the only occupants of the Property which has not been adapted to meet any of their needs as a result of disability. He said that if he got another job, which he was hopeful of, he would require to be away from home and he would not want to leave the organisation of a removal to his wife alone. He said that he therefore would want time to make other housing arrangements.

22. Mr McKenzie- Stewart said that neither he nor his wife have particular health issues which could be advanced for reasons not to grant the order. He said that they are both active although there have been concerns about coronavirus because of Mrs McKenzie-Stewart's age. He said that neither of them had been in the shielding category during the Covid-19 restrictions.
23. The Tribunal considered the position of the Applicant. He wants to sell the Property and has received an offer for it. He is also owed £12,000 for rent. Rent arrears is not relevant as far as the application for an eviction order before the Tribunal but is a factor to be considered when considering the position of the Applicant in seeking to recover the Property.
24. The Tribunal considered matters and determined that it is reasonable to grant the order for eviction. It found no reasons not to grant the order. The Applicant is entitled to recover the Property and sell it, particularly in circumstances where there were no particular reasons advanced by the Respondents as to why the order should not be granted. The Respondents, having been given six months' notice of the Applicant's intention to sell the Property, could have made other arrangements for accommodation.

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.



Martin J. McAllister, Legal Member
19th May 2021