



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/21/1102

Re: Property at 106 East Main Street, Armadale, West Lothian, EH48 2NZ (“the Property”)

Parties:

Mr David McLennan, Easter Breich Farm, West Calder, EH55 8PP (“the Applicant”)

Mrs Vicky McNeill, 106 East Main Street, Armadale, West Lothian, EH48 2NZ (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 2pm on 21 July 2021 by teleconference. The Applicant called in to the conference in person and also had a representative with him. Due to some technical difficulties, however, he addressed the Tribunal at the CMD himself. The Respondent called in to the conference in person.

- Findings in Fact

1. The Respondent occupies the Property in terms of a private residential tenancy with a start date of 24 August 2018.
2. On 2 November 2020, the Applicant sent a notice to leave by email to the Respondent, indicating that he wished to sell the Property.
3. The notice to leave gave 5 May 2021 as the earliest date that proceedings could be raised if the Respondent did not leave the Property.
4. This application was made on 7 May 2021.
5. The Applicant is the sole owner of the Property.
6. The Applicant intends to sell the Property for market value, or at least put it up for sale, as soon as the Respondent has ceased to occupy it.
7. The Respondent occupies the Property with her 14 and 19 year old sons. She has a 20 year old son who also stays with her there on an occasional basis.
8. The Respondent has made applications for housing to her local authority and social landlords and has been on their waiting lists for more than two years.
9. The Respondent has been told by the local authority that she will not be prioritised for rehousing until there is an order for her eviction.
10. The Respondent's son is well-settled at the school he currently attends and she does not wish to have to move him.
11. The Applicant owns the Property as part of a portfolio of properties which he invested in as a fund for his retirement.

12. As part of the plan by which he draws down this investment, he sells a property from his portfolio on a yearly basis and has mortgage payments tied into that plan.

13. Having held off from selling this Property during the period of coronavirus restrictions, he is now in overdraft.

14. It is reasonable for an eviction order to be granted.

- Reasons for Decision

15. There is no dispute in this case as to the Applicant's right and intention to sell the Property: only as to whether or not it is reasonable to issue an eviction order on account of those facts.

16. In determining that question, it is not easy to weigh what are primarily financial concerns on the part of the Applicant against what are concerns of a different kind on the part of the Respondent. It is clear that being made homeless will result in considerable prejudice to her in terms of stress and upset. The Applicant will not be made homeless if this application is not granted and so will not be subject to prejudice of the same type.

17. Nonetheless, the Tribunal considers that there is also considerable prejudice to the Applicant, if he is prevented from being able to sell the Property. He requires to be allowed to liquidate this asset to finance his retirement plan and has already delayed (and been delayed) in doing so, incurring debt as a consequence.

18. In normal circumstances, the ground relied on is mandatory and no question of reasonableness arises. The Respondent acknowledged that her interests could not prevent the sale of the Property indefinitely, but suggested that a delay in granting an order may allow the local authority or other agencies to find a placement for her.

19. The Tribunal did not agree with that conclusion. It is most unsatisfactory that the local authority will not prioritise the Respondent for housing until an eviction order has been granted. In a case involving this ground for eviction, there can be no question about the fact that the tenant is at imminent risk of homelessness once a valid notice to leave has been served. The local authority's failure to recognise that fact means that there is no realistic prospect of the Respondent being found alternative accommodation in the foreseeable future, without an order being granted. Granting the order, on the other hand, will mean that the local authority will give her case the priority it should receive.

20. On that basis, the Tribunal considered that it was reasonable to grant the order. The Applicant must be allowed to sell the Property at some point and, in terms of a reduction to the stress and upset it will cause her, there is no real benefit to the Respondent in delaying that process. Indeed, it would appear that the necessary work to rehouse her and her family will not be undertaken by the responsible agencies without an order being granted.

- Decision

Eviction order granted.

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.

N. Y

Legal Member/Chair

21 July 2021

Date