



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/1439

Re: Property at 63 Taylor Green, Livingston, West Lothian, EH54 8SX (“the Property”)

Parties:

Mr Thomas Murray, 141 Raeburn Rigg, Livingston, West Lothian, EH54 8PJ (“the Applicant”)

Mr Aaron Mcculloch, Mrs Lisa Mcculloch, 63 Taylor Green, Livingston, West Lothian, EH54 8SX (“the Respondents”)

Tribunal Members:

Alastair Houston (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made against the Respondents on the basis of paragraph 1 of schedule 3 of the 2016 Act.

1. Background

1.1 This is an application under rule 109 of the Chamber Rules, being an application for an eviction order against the Respondents in respect of a property let to them on a private residential tenancy agreement. The application had been accompanied by copies of the written tenancy agreement between the parties, the notice to leave served on the Respondents and an email from an estate agent confirming the instruction to market the property for sale.

1.2 A Case Management Discussion had taken place on 11 August 2021. At the Case Management Discussion, it had been identified by the Tribunal that the only issue that required to be determined was whether it was reasonable for an eviction order to be granted, following the amendment of

the 2016 Act by the Coronavirus (Scotland) Act 2020. A Hearing had been assigned to allow parties the opportunity to give evidence to the Tribunal as to whether it was so reasonable or not.

- 1.3 Between the Case Management Discussion and the Hearing, further documents had been lodged on behalf of the Applicant including copies of photographs of his current accommodation, a home report produced in respect of the property, marketing materials and a rent statement.

2. The Hearing

- 2.1 The Hearing took place on 18 October 2021 by teleconference. The Applicant was personally present and represented by Ms Donnelly, solicitor. The Respondents were both present and the First Respondent represented their position.
- 2.2 The Applicant gave evidence. He confirmed that he was 45 years of age and the sole owner of the property. It had been purchased in 2013. He had initially lived at the property then made the decision to make it available for rent. His sole income at present was the rental received from the property. Prior to the tenancy with the Respondents commencing, he had a discussion with the first Respondent as to his intentions with respect to the property. He had intended to sell around January 2021. The First Respondent had mentioned his interest in purchasing the property at the time however, this was now not feasible. He had purchased a motorhome in which he currently resided with his partner. This was shown in the photographs numbered 8 on the Applicant's second inventory. It was his intention to use the motorhome to travel around Italy however, before departing, his partner's father and mother both suffered ill health. He had been making arrangements to transport the motorhome to the USA around a week before the COVID-19 pandemic struck the UK in early 2020. He had thereafter been unable to go travelling as planned.
- 2.3 The Applicant advised that he was disabled since a motorcycle accident. He had suffered the amputation of his left arm as well as brain and spinal injuries. The injury caused pain in cold weather. He and his partner struggled to heat the motorhome in winter due to its facilities for same and the requirement to obtain LPG fuel. Heating the motorhome was expensive. He wished to sell the property to enable him and his partner to buy a 2 bedroom property in which they could reside. The remaining proceeds would be used to purchase other properties to rent for income. The Applicant was not currently in work and had been unsuccessful in obtaining employment recently. He was limited in the work he could do following his accident. He had had the property valued at £320,000.00 and believed that it would sell quickly as a number of prospective buyers were interested. He had contacted the local authority who had confirmed the Respondents had not sought assistance as soon as the notice to leave had been served and accommodation would likely have been available had they done this. There had been issues with the Respondents providing

access for the purpose of the home report and viewings of the property by prospective purchasers.

- 2.4 In response to further inquiry by the Tribunal, the Applicant confirmed that his partner, Stacey Agostini, was not currently in employment. She was currently a student and had no income. He owned another property which was occupied by his mother, father, sister and her partner. They paid no rent. It was a 2 bedroom property in which he could not reside. There was no finance outstanding on the property which was the subject of the application. He anticipated buying a property to reside in at a cost of approximately £155,000.00 and rental properties that would cost between £60,000-70,000.00 each. He also anticipated providing financial assistance to his partner's brother in respect of legal fees. He had purchased the property using compensation received after his accident. The motorhome he owned was likely worth between £25,000-30,000.
- 2.5 The First Respondent then gave evidence. He confirmed he resided with his wife, the Second Respondent and their six children, aged 16,14,13,12,8 and 7. He was a self-employed roofer and his wife a stay at home mother. His eldest child had commenced a hairdressing traineeship and the rest were still at school. The schools attended were within a mile from the property. His income fluctuated however he could draw income of £1000.00 per week from his self-employment. In addition, he received around £362 every 4 weeks as a benefit for acting as a carer for his brother. He accepted that he had had a conversation with the Applicant at the time the tenancy commenced. The Applicant had mentioned likely wishing to sell the property but no specific timeframe had been discussed. He had indicated he would be interested in purchasing the property as, prior to the COVID-19 pandemic, he had been involved in another business with his brother and believed he would have the resources. His finances had been negatively affected by the pandemic and this was no longer feasible.
- 2.6 He confirmed that he recalled receiving the notice to leave. He had begun looking for other properties and had contacted the local authority in November but had been content to apply for private lets, believing that something would become available. He contacted the local authority again in early 2021. They advised they had no suitable accommodation at the time and encouraged him to continue to look at the private sector. The current agents for the property, Castlebrae, did not have any alternative accommodation suitable. He has spoken to the caseworker at the local authority on a weekly basis since March 2021. He has been advised that they would provide temporary accommodation if needed however, due the size of the family, they may need to be split between two properties. He had applied for 14 properties in the private sector since August. He was applying for four or five bedroom properties. All applications had been unsuccessful. He had either been given no reason for the application being unsuccessful or had been told the family size was too large. He had been turned down by Castlebrae for a suitable property as they mistakenly recorded him as owning a dog. The family had rehomed their dog earlier in the year to enable them to access a wider range of accommodation.

2.7 He confirmed he had had no advice with regards to finding alternative accommodation other than that provided by the local authority. He had received no requests for access to the property from Castlebrae since April other than for the purpose of maintenance. They would communicate with him by email. Whilst he was not in a position to purchase the property, he could afford to rent at a cost of up to £1,500.00 per month. He had savings and assets of around £12,000.00. He was not wishing to cause stress to the Applicant but the last 6 months had been difficult for him and his family due to the threat of homelessness. The Second Respondent had recently had knee surgery as well as having contracted COVID-19, as had two of the children. He was prepared to search for properties within a radius of 10 to 15 miles from the property. He had been advised by another agency, Yourmove, that a suitable property may be available in February.

2.8 The Tribunal then heard brief submissions from Ms Donnelly and the First Respondent. On behalf of the Applicant, Ms Donnelly invited the Tribunal to grant the order sought. She highlighted the reasons as to why the Applicant required to sell the property, namely his housing situation, the aggravation of his health conditions during the winter months, the discussion between the parties at the commencement of the tenancy with regards to the Applicant's intention to sell the property and the Respondents' circumstances to the extent that they had sufficient income to secure alternative private accommodation and should not become homeless due to the assistance available from the local authority. The First Respondent highlighted the prospect of his family being split up in temporary accommodation which he considered to be as detrimental as street homelessness and maintained their financial circumstances to be irrelevant as they had not failed to find alternative accommodation due to a lack of affordability.

3. Findings in Fact

3.1 The parties entered into a private residential tenancy agreement which commenced on 25 July 2019.

3.2 At the time of commencement of the tenancy, the Applicant and First Respondent discussed the Applicant's intention to sell the property at a point in the future.

3.3 The property is occupied by the Respondents and their six children aged 16,14,13,12,8 and 7.

3.4 Notice to leave the property was served by the Applicant upon the Respondents by email on 23 November 2020.

3.5 The Applicant intends to sell the property to purchase a smaller property in which to reside and further rental properties from which he would derive an income.

- 3.6 The property is currently marketed for sale at offers over £318,000.00.
- 3.7 The Applicant and his partner currently reside within a motorhome purchased for travelling which has not been possible as a result of the COVID-19 pandemic.
- 3.8 The motorhome was reliant on LPG fuel and was inconvenient and expensive to heat which caused the Applicant pain and discomfort due to injuries suffered in a motorcycle accident.
- 3.9 The Applicant's income comprises wholly of the monthly rental received from the Respondents as he and his partner are not in employment.
- 3.10 The Applicant has been unable to find suitable employment due to his health issues following the motorcycle accident.
- 3.11 The Applicant owns one other property occupied by his mother, father, sister and her partner in which there is no room for him and his partner to reside.
- 3.12 The Respondents require a property with a minimum of four bedrooms.
- 3.13 The Respondents have sufficient household income through the First Respondent's self-employment as a roofer and benefit paid to him as his brother's carer to afford a monthly rental of up to £1,500.00.
- 3.14 Since early 2021, the Respondents have been seeking assistance from the local authority with regards to obtaining alternative accommodation.
- 3.15 The Respondents have made a number of unsuccessful applications for housing in the private sector, in part, due to the size of their family.
- 3.16 In the event the Respondents required to leave the property, they would be owed a statutory duty by the local authority to ensure they did not become homeless.

4. Findings In Law

- 4.1 The Applicant has established a ground for the granting of an eviction order in terms of paragraph 1 of schedule 3 of the 2016 Act.
- 4.2 In the whole circumstances, it is reasonable to issue an eviction order.

5. Reasons For Decision

- 5.1 The power of the Tribunal to grant an eviction order is governed by sections 51 to 53 of the 2016 Act. In terms of section 52(3) of the 2016 Act, the Tribunal is not to grant an order unless it is accompanied by a copy of the notice to leave given to the tenants. In the present application, the notice

to leave was served by email on 23 November 2020. It specified that no application would be made earlier than 27 May 2021, being a period of notice of six months, which conformed with the requirements of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). Accordingly, the notice to leave was valid.

- 5.2 The Tribunal accepted that the Applicant was the sole owner of the property and therefore entitled to sell it. Furthermore, the Tribunal accepted the evidence of the Applicant together with the documentation lodged which demonstrated his intention to sell the property. The requirements of paragraph 1(2)(a) and (b) were satisfied.
- 5.3 Although previously a mandatory ground for issuing an eviction order, the Tribunal was mindful that the 2020 Act now required consideration as to whether it was reasonable to issue an eviction order on the basis of paragraph 1 of schedule 3 of the 2016 Act, being the ground relied upon by the Applicant in the present application. The live issue in the present application was therefore restricted to one of reasonableness.
- 5.4 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 5.5 In this application, the Tribunal balanced the needs of both parties. In the Applicant's favour, it was accepted that his current housing situation was less than satisfactory. He had been residing in a motorhome for a significant period of time. He suffered from a residual health issues following his motorcycle accident and the Tribunal accepted his description of how these were affected by the colder weather over winter. He wished to sell the property, as would ordinarily be his right, to purchase a permanent home in which to reside with the remaining proceeds being used towards providing him with an income given his difficulties in finding employment. In the Respondents' favour, the Tribunal placed weight on their family composition, given that they had six children residing with them, five of whom were under fifteen. Furthermore, the Tribunal accepted that they required a particularly large size of property and that this may not be readily available.
- 5.6 The Tribunal found that the whole facts and circumstances favoured the Applicant. In addition to those described above, the Tribunal also placed weight on the fact that parties had discussed the Applicant's intention to sell the property at the time the tenancy commenced. Whilst a time frame may not have been specified, the Respondents would have been aware that the day would come when alternative accommodation was required. Whilst a degree of security is afforded by the regime within the 2016 Act, it is not for the Applicant to provide the Respondents with accommodation

indefinitely when he has made a reasoned decision to sell the property. In addition, it was within the Tribunal's knowledge that the local authority would owe a statutory duty to the Respondents upon them being required to move from the property which would provide a safety net preventing them from becoming homeless. The First Respondent may be concerned about the family being split up should temporary accommodation be required however, the Tribunal was not provided with any evidence that this would occur. Accordingly, the Tribunal placed little weight on the suggestion that the local authority would make such, arguably unlawful, arrangements for the family.

5.7 The Tribunal was not without sympathy for the Respondents' situation. This was not sufficient to render the granting of order unreasonable however, the Tribunal considered it in the interests of justice to exercise the power available in rule 16A(d) of the Chamber Rules given the number of children that resided with the Respondents. Execution of the order is therefore delayed until 12 January 2022. This additional period will allow further opportunity for the Respondents to receive assistance from the local authority and ensure they are not required to move to temporary accommodation shortly before the commencement of the festive season, should such accommodation be necessary.

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: Alistair Houston

Date: 20 October 2021

