



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

Chamber Ref: FTS/HPC/EV/21/2440

Re: Property at Flat F, 20 Hill Street, Montrose, Angus, DD10 8AZ (“the Property”)

Parties:

John Douglas Grieg, Wendy McSheffrey, 52 Cauldhame Rigg, Stewarton, Kilmarnock, KA3 5QJ (“the Applicant”)

Mr Callum Slevin, Flat F, 20 Hill Street, Montrose, Angus, DD10 8AZ (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Introduction

This Hearing concerned an Application for Eviction in relation to a Private Residential Tenancy under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by teleconference due to the covid-19 pandemic.

1. Attendance and Representation

The Applicant was present and represented by Alexandra Wooley, solicitor, Bannatyne Kirkwood France & co, 16 Royal Exchange Square, Glasgow, G1 3AG, attended for the Applicant.

The Respondent was not present. There had been no contact from the Respondent since the last Hearing.

2. Previous Procedure

The Tribunal determined at an earlier Case Management Discussion (“CMD”) that the issue of reasonableness could not be determined on the evidence before it at that CMD. The Tribunal fixed a Hearing so that further evidence could be heard.

3. Preliminary Matters

The Respondent was not present. He had been present at the CMD which called previously. There had been no contact since the CMD from the Respondent to the Applicant or to the Tribunal and he was aware of the Hearing.

There were no other preliminary issues raised.

4. Summary of Evidence

For the Applicant

1. The Applicant set out that she was 52 years of age and employed as a social worker. She explained that the property was initially purchased by herself and her partner in 1992 as their home.
2. The Applicant told the Tribunal that they moved to go to university and started to rent the property and changed the mortgage to a buy to let property. She said there was 42k outstanding on this mortgage and that she and her partner did not return from university to live in the property and instead settled in Stewarton from 2005. The Applicant referred to mortgage information and financial information lodged.
3. The Applicant said the property then became a longer term plan and investment. She said in 2021 she was signed off work due to ill health and that repairs were needed to the family home. A decision was made to sell the property. She told the Tribunal that they had spoken to solicitor and marketing agents in Montrose. Correspondence was referred to from the productions in this regard.
4. The Applicant said that she intended to put the property on the market as soon as was physically possible. She referred to detailed financial information lodged which showed that the family had instructed bathroom works to their family home where deposits had been paid for 2 new bathrooms. The balance was due once the works were completed, and they are due to commence soon.
5. The Applicant set out that she considered the property was not financially beneficial now. She said that she pays £540 to a letting agent, she had insurance and maintenance costs, gas safety costs and her mortgage was

£143.23 per month. She said that rent was £300 per month. She referred to bank account information which showed she had made transfers of money into this account which she said relates to the property. She said she had to transfer funds rather than go into overdraft. She referred her to bank statement from RBS which they use as the flat account.

6. The Applicant gave evidence that a repair to the shower cost £330 and new gas central heating had also been installed. She said that she was no longer wishing to rent the property as they felt it was no longer financially viable and not worth the stress, with at times, the outgoings for it are greater than the income.
7. The Applicant said her own home was around 20 years old and they had undertaken a degree of maintenance over the years, but they wished now to take further steps. She said as she had been signed off her work although now she had returned she wanted to future proof her house whilst her and her partner were still working. She said she resides there with her partner and her 13 year old and 16 year old children and wanted to keep the property maintained. The Applicant said the rent arrears also hangs over her for the property and no longer wishes to maintain 2 properties.
8. The Applicant said the letting agent had written to the Respondent regarding the rent arrears and she knew now the Respondent had applied for universal credit and that they may be able to ask for the rent part to be paid directly to the landlord.

5. Submission

The Applicant's solicitor set out that she sought an Order for Eviction in terms of Section 51 Private Housing (Tenancies) (Scotland) Act 2016 on the basis of ground 1 of part 1 of schedule 3 in order to sell the property. She submitted further that she considered that as heritable proprietors the Applicants were entitled to sell and that they intended to do so referring to the letters of engagement lodged. She invited the Tribunal to hold that the Applicant was a credible and reliable witness and that it was also reasonable for an order to be granted. The submission was that the costs including agency fees, mortgage costs, insurance maintenance established that the property did not make the Applicants a lot of money. She said the margins were small and that the Applicant's wanted to sell the property to release the equity to fund improvements in their family home. On the question of reasonableness her submission was that where there is a prima facie case for reasonableness then in reference to the case of *Glasgow DC v Erhaigonoma*, 1993 WL 966193 (1993) Murray where there is a prima facie case made out then it is for the tenant to make out otherwise. She submitted the Respondent had not appeared and has not lodged evidence but had she understood a diagnosis and mental health condition. In response to the Tribunal who indicated the case may not be directly relevant as this application related to a statutory Tribunal with an overriding objective then she submitted that the case was still relevant although before the creation of the Tribunal she considered the sentiment to be correct.

6. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent. The Respondent had been present at the CMD . The Tribunal had intimated the date to the Respondent and the Applicant had lodged productions with the Respondent. It was in the interests of the parties having regard to the Overriding objective to proceed.**
- 2. The Applicants sought an Order for Eviction on the grounds they wished to sell the property.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 31st January 2019. A Notice to Leave was sent to the Respondent on 3rd March 2021.**
- 5. The Tribunal was satisfied on balance that the Applicants in terms of Schedule 3, Part 1 Ground 1 of the 2016 Act intends to sell the property, are entitled to sell the property and in terms of same seeks to market for sale as soon as possible. The Tribunal are in receipt of letters of engagement in terms of sale of the property.**
- 6. Further the Tribunal was satisfied on a balance that it was reasonable that an Order for Eviction be granted.**
- 7. The Tribunal found that the full requirements of Ground 1 of Schedule 3 to the Act had been met.**
- 8. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**

7. Reasons for Decision in Absence.

The Tribunal heard credible and reliable evidence from the Applicant together with substantial productions which narrated the financial position of the Applicants and the property itself in terms of cost and maintenance. The written evidence supported the detailed and thoughtful evidence of the Applicant. The Tribunal did, although the decision was made in absence, consider the position of the Respondent as previously noted at the CMD. The Respondent had previously submitted following the pandemic he was diagnosed with mental ill health and had applied for Universal Credit.

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: Karen Kirk

Date: 31st January 2022