



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/22/2425

Re: Property at 34 Gogoside Road, Largs, KA30 9LX (“the Property”)

Parties:

Mrs Marlyn Green, 23 Haylie Gardens, Largs, KA30 9LT (“the Applicant”)

Mr David O'Brien, Mrs Alexis O'Brien, 34 Gogoside Road, Largs, KA30 9LX (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in favour of the Applicant for the removal of the Respondents from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 18th July 2022 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to a direction from the Tribunal:-
 - A copy of the Tenancy Agreement dated 23rd May 2019
 - Copy Notice to Leave dated 10th January 2022
 - Evidence of sending Notice to Leave by recorded delivery dated 10th January 2022
 - Copy S 11 Notice to North Ayrshire Council
 - Copy e-mail to North Ayrshire council dated 18th July 2022
 - Letter from Corum Estate Agents dated 24th August 2022.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference.
4. Ms Andrea Bell of Acre Lettings appeared on behalf of the Applicant. Mr David O'Brien the first Respondent also attended but was not represented.
5. Ms Bell advised that she was instructed to seek an order for possession of the Property today. She confirmed that this was formerly the family home of the 3 owners of the Property who had inherited it from their late mother and who had decided after careful consideration that it should be sold. She advised that some of them were elderly and as it was owned jointly, they had taken a decision that it had to be sold. She advised that the tenants had been in the Property for some time and the rent had not been increased and was now below market value. She confirmed there were no issues with the conduct of the tenants. Ms Bell under questions from the Tribunal advised that the landlord does own and rents out other small flats with her husband but this was the former family home, a much larger property and that it was a joint decision to sell by all the owners.
6. Mr O'Brien when asked what his view was explained that they had been served notice to leave in January but that when they spoke to the Council they were told should they leave in July they would be treated as intentionally homeless and to wait until an order was granted from the Tribunal. He advised that he and his family, had lived there since 2009, but that a new tenancy was entered into in 2019 which is the current tenancy. He also confirmed that he has 2 children who have special needs and that the Property needed major upgrading and had some damp issues. He confirmed he wished to move into a local authority home as he did not think they could afford a private let. Mr O'Brien confirmed that he has not been offered anything by the council and thought it would be helpful if there was a delay in the execution of the order so that there would be additional time to find a suitable property.
7. Ms Bell confirmed that the Landlord and joint owners would be seeking to sell as soon as possible.

Findings in Fact

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 23rd May 2019.
2. The tenancy is continuing.
3. A notice to leave dated 10th January 2022 was served on the Respondent by recorded delivery stating that no proceedings would be raised before 1st 13th July 2022.
4. These proceedings were raised on 18th July 2022 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on North Ayrshire Council
6. The Applicant intends to sell the Property and wishes to do so after the Respondents leave.
7. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was served by recorded delivery which was received by the Respondents on 11th January 2022.
10. The Application was accompanied by evidence of how the ground was met namely by the lodging of a letter of engagement of estate agents to sell the Property.
11. Ground 1 requires 6 months' notice under the rules which were in force in terms of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 13th July 2022 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
12. The Application was lodged on 18th July 2022. It was therefore lodged after the expiry of the Notice period and is therefore an application that the Tribunal can consider.
13. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. "It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord-
 - a. Is entitled to sell the 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.
14. 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
 - c. And it is reasonable to do so
15. The Tribunal accepted the verbal averments of Ms Bell that the Applicant's intention is to sell the Property. This is supported and evidenced by the written letter of engagement from Corum Estate Agents offering to market the Property.
16. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Ms Bell and Mr O'Brien that this was the former home of the owners' mother, that the Respondents have lived there for a long, formerly under another tenancy agreement, and major upgrading work is required to the Property as no upgrading had taken place since the tenants moved in. Mr O'Brien did not object to the application but was seeking a local authority house for him and his family and if an order was to be granted he indicated that he would like more than 30 days before it could be executed. Weighing up the evidence,

that the Applicants own the house jointly and some are elderly and all wish the house to be sold, and given the fact that the Respondent believes major refurbishment work is required to the house, that he is not objecting to the application and noting the Respondents wish a local authority house the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property.

17. Given that it is nearing the Christmas holiday period and given the Respondents have 2 children with special needs, the Tribunal unanimously agreed it would be appropriate to order a delay in the execution of the order to 28th February 2023 to give some more time to allow them to consider any offers of accommodation from the council.
18. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted but that there should be a delay in the execution of the order to 28th February 2023.

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.

Jan Todd

Legal Member/Chair

14th December 2022

Date