



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

Chamber Ref: FTS/HPC/EV/23/1356

Re: Property at 59 Strachur Crescent, Glasgow, G22 6PW (“the Property”)

Parties:

Mrs Amanda McKeown, 36 Messina Drive, Singra, Perth, 6065 WA, Australia (“the Applicant”)

Miss Jade Houston, 59 Strachur Crescent, Glasgow, G22 6PW (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr C Campbell (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is a Rule 109 application made in the period between 26th April and 1st June 2023. The Applicant indicated in the application form that they were seeking an eviction order under grounds 1, 1A and 12. The Applicant representative lodged a copy of a private residential tenancy agreement between the parties that commenced on 28th October 2019, copy Notice to Leave citing grounds 1 and 12 dated 5th January with proof of delivery on 6th January 2023, copy section 11 notice with evidence of service, rent statement, mortgage lender correspondence, evidence of intention to sell, and email correspondence.
2. By email dated 4th July 2023, the Applicant representative was informed that the application had been accepted on ground 1 and that an application to include ground 1A would be necessary with submissions on why it would be reasonable for the Tribunal to grant permission to include a ground that was not included in the Notice to Leave. No response was received by the Tribunal.

3. By Direction dated 4th September 2023, the Applicant was directed to lodge the information mentioned at paragraph 2 above, and further documentation and information to support ground 1A by 13th September 2023. The Direction was not issued until 11th September 2023.
4. By email dated 7th September 2023, the Applicant representative lodged an updated rent statement and a letter of the same date advising the Respondent of the arrears and providing sources of advice.
5. By email dated 14th September 2023, the Applicant representative requested an extension to the period allowed for lodging a response to the Direction, stating that there had been difficulties in getting the information by email from the Applicant for geographical and technical reasons.
6. No further documentation or information was received from the Applicant representative.

The Case Management Discussion

7. A Case Management Discussion (“CMD”) took place by telephone conference on 20th September 2023. The Applicant was not in attendance and was represented by Mr Craig McColl and Ms Carol Brown Blair, GSPC Ltd. The Respondent was in attendance.

Procedural Issues

8. There was some discussion about administrative delays in issuing the Direction, which had impacted upon the Applicant’s ability to lodge documentation to support ground 1A. The Tribunal indicated that the Applicant had been made aware of the need to submit an application to include ground 1A by the email of 4th July 2023, and no such application had been received. Mr McColl indicated that a response had been sent to the Tribunal.
9. Following discussion of the respective positions, as set out below, the Tribunal indicated that the CMD could be adjourned to another date if the Applicant wished to proceed in terms of ground 1A. This would allow her to submit further documentation and representations. The CMD was adjourned to allow Mr McColl to take the Applicant’s instructions. On reconvening, Mr McColl said, despite the fact that the execution of an eviction order granted under ground 1 and 12 would be delayed by the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Applicant would prefer to continue with those grounds, rather than delay matters to another CMD, however she was concerned there would be further arrears over the period between the CMD and the execution of an eviction order. The Respondent indicated that she was satisfied with this course of action, and stated that the rent would be paid between the CMD and the execution of an eviction order.

The Applicant's position

10. Mc McColl said the Applicant is in financial difficulties and is no longer able to maintain the mortgage on the Property. Letters from the mortgage lender dated March and April 2023 showing missed mortgage payments had been lodged on behalf of the Applicant. The outgoings on the Property are in excess of the income from rental. The Applicant cannot sustain these losses, so she decided to sell the Property. The Respondent allowed marketing and viewings to take place. A buyer who was prepared to accept a sitting tenant was found, but the sale fell through. Another sale has since fallen through as the buyer would not accept the Property without vacant possession. The Applicant wishes to sell the Property to improve her financial position. The Property is not currently on the market, as it has proved impossible to sell with a sitting tenant.
11. Mr McColl said the Respondent was not paying rent on time and this was causing difficulties for the Applicant. The arrears at the time of the CMD were £880 and this would rise by the monthly rent of £725 in a week's time.

The Respondent's position

12. The Respondent said she was keen to leave the Property, and would prefer to have the security of social housing. She is in regular contact with the local authority and has contacted her local MSP for assistance.
13. The Respondent has two children and is a kinship carer for a third child. She has medical issues. Her 4-year-old son is awaiting an appointment and a diagnosis of a medical condition is expected. Responding to an allegation made in correspondence lodged with the Tribunal that she had refused suitable social housing, the Respondent said she had previously turned down two properties. The Respondent explained the circumstances behind both refusals, which she said were due to compelling family and safety reasons. She said she had taken suitable advice on the matter. The Respondent is in regular contact with the homelessness team at the local authority. She was contacted a few days before the CMD by the homelessness team to inform her that a two-bedroom property was likely to become available soon and it would be allocated to her. The Respondent said a two-bedroom property is not ideal for the size of her family, but she would take the property if offered.
14. The Respondent said she had got into financial difficulty since becoming a kinship carer, as there had been significant related costs. She receives her benefits every four weeks, and the rent is due monthly. The Respondent accepted there was often a delay in paying the rent. She said she has been trying to pay £100 per month towards the arrears but this is not always possible. She indicated she would be in a position to pay the rent the following week.

Findings in Fact and Law

- 15.
- (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 28th October 2019 at a monthly rent of £725.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.
 - (iii) The Applicant is entitled to sell the Property.
 - (iv) The Applicant intends to sell the Property for market value or at least put it up for sale within three months of the Respondent ceasing to occupy the Property.
 - (v) The Applicant is having difficulty meeting the mortgage payments on the Property.
 - (vi) The Respondent lives in the Property with three children.
 - (vii) The Respondent is on the local authority housing list and is awaiting allocation of a property.
 - (viii) It is reasonable to grant an eviction order.

Reasons for Decision

16. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act. The requisite section 11 Notice has been served upon the local authority.
17. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to sell the let property. The Tribunal may find the ground met if the landlord is entitled to sell the property and intends to do so for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it. The Tribunal accepted that the Applicant intends to sell the Property as required by the legislation. The Tribunal was satisfied that Ground 1 had been established.
18. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is

reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

19. The Tribunal was unsure whether ground 12 had been established as the format of the rent statement made it difficult to read. The Tribunal considered it likely that the ground was met, as there may have been rent arrears for three consecutive months. The arrears were not due to a delay or failure in the payment of a relevant benefit. The Tribunal considered that, even if ground 12 was met, it would not be reasonable to grant an eviction order on that ground, as the arrears arose as a result of significant hardship to the Respondent which was not of her own making. She has since made efforts to clear the arrears, which are currently relatively low. The Tribunal also noted that no pre-action requirement correspondence had been provided to the Respondent by the Applicant, as required by the pre action protocol. The only letter lodged with the Tribunal had been provided after the application was made to the Tribunal.
20. The Tribunal considered that the Applicant is in financial difficulty as evidenced by the mortgage lender letters, and the fact that the rent does not cover the mortgage. The outgoings on the Property are in excess of the income from rental. This situation has been ongoing for some time, and it is unlikely, on the evidence before the Tribunal, to improve.
21. In considering the Respondent's circumstances, the Tribunal took into account the Respondent's wish to leave the Property and to secure social housing, as well as the imminent offer of a property.
22. In all the circumstance, the Tribunal decided it was reasonable to grant the order.

Decision

23. An eviction order in respect of the Property is granted. The order is not to be executed prior to the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted (20th September 2023), or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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/Chair

25th September 2023

Date