



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/21/2041

Re: Property at 4 Malcolm Court, Kilmaurs, KA3 2BE (“the Property”)

Parties:

Mr Peter McGivney, 11A Mure Avenue, Kilmarnock, KA3 1UH (“the Applicant”)

Miss Sharon Tippen - Thomson, Mr Jonathan Reid, 4 Malcolm Court, Kilmaurs, KA3 2BE (“the Respondents”)

Tribunal Members:

Andrew Upton (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Second Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the tenancy agreement ended on 3 November 2021, that the Applicant intends to sell the Property, and that it is reasonable to grant the eviction order and to supersede execution until 10 January 2022.

FINDINGS IN FACT

1. The Applicant is the Landlord, and the Respondents are the Tenants, of the Property under and in terms of a Private Residential Tenancy Agreement dated 12 June 2020.
2. By Notice to Leave dated 22 January 2021, the Applicant gave six months’ notice to the Respondents that he required possession of the Property under Ground 1, in that he intended to sell the Property.
3. The Respondents began looking for alternative accommodation in or around March 2021.

4. In or around July 2021, it became clear to Miss Tippen that the Respondents were likely to separate. At that time, she began looking for alternative accommodation for her and her son only.
5. The Respondents separated in September 2021.
6. Miss Tippen resides at the Property with her twelve month old son.
7. Miss Tippen is in full time employment near to the Property.
8. Miss Tippen's son attends a nursery close to the Property.
9. Miss Tippen does not require the Property in order to be close to her place of employment or the nursery her son attends.
10. The Applicant has recently divorced from his former wife.
11. The Applicant is due to make a large capital payment to his former wife on 31 January 2022.
12. The Applicant requires to raise finance from his property portfolio in order to fund the capital payment to his former wife.
13. The Property is not subject to secure lending.
14. The Applicant intends to sell the Property.

FINDINGS IN FACT AND LAW

1. It is reasonable to grant an eviction order under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The Tribunal must make an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
3. The tenancy ended on 3 November 2021.
4. Enforcement of the eviction order should be superseded to 10 January 2022.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 3 November 2021. The Applicant was represented by Mrs Houston. The first named Respondent, Miss Tippen, was present on the call. The second named Respondent, Mr Reid, was neither present nor represented.

2. In this Application, the Application seeks an eviction order under ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), which is that he intends to sell the Property. In the Application, the Applicant asserts that he has recently been through a costly divorce, and is due to make a large capital payment to his former wife (“the Divorce Payment”). He says that he requires to sell the Property in order to raise sufficient funds to make the Divorce Payment.
3. At the CMD, Mrs Houston was able to provide additional information to the Tribunal. She advised that the Applicant had already sold six properties in his portfolio in order to raise the funds necessary to make the Divorce Payment to his former wife. The next instalment of the Divorce Payment is due on 31 January 2022. If payment is not made then his former wife may take enforcement action, which may include repossessing the Property. It is anticipated that it will take between eight and twelve weeks for the Property to be sold. Mrs Houston submitted that the clock is ticking down, and the longer this process takes then the more likely that it is that the Divorce Payment will be missed. She submitted that the Applicant had no dispute with the Respondents, and that this was not of their making. However, the circumstances are what they are, and the Applicant requires to sell the Property. Under questioning from the Tribunal, Mrs Houston confirmed that the Property is not subject to secure lending, and that the Applicant has not sought to obtain secured lending in order to make the necessary payment. Mrs Houston also said that she had seen a social media post from the second named respondent suggesting that the Respondents were looking for a large rural property to move to, and if that remained their expectations then those expectations were unreasonable.
4. Miss Tippen accepted that what Mrs Houston had said was true. In respect of the social media post referred to, Miss Tippen advised that this had been the case at the start of 2021 when the Notice to Leave had first been served. However, her circumstances had now changed. Miss Tippen advised that she had separated from Mr Reid in September 2021. She now lives in the Property with her twelve month old son. She started a new job in the area in August 2021 and works full time. Her son attends a local nursery. Following service of the Notice to Leave, the Respondents had looked for alternative accommodation to fit their family needs from about March 2021. However, it became clear in July 2021 that the Respondents were likely to separate, at which time Miss Tippen began looking online for suitable accommodation for her and her son only, but had been unable to identify suitable properties. She submitted that her expectations were not high. She said that she is looking for a two bedroom property. She does not want a flat. She is looking at a variety of areas; not just the locale of the Property. She has not made any enquiries with the local authority regarding her housing status as a consequence of potentially being made homeless. She said that she did not think she would be eligible for support due to her being in full time employment. Miss Tippen said that she had been distracted from her search for alternative accommodation by her starting a new job. Mrs Houston did not dispute anything that Miss Tippen stated.

5. The Tribunal is empowered by Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Procedure Rules to do anything at a Case Management Discussion that it may do at a Hearing, including make a final decision. The Tribunal is also required by Rule 2 to have regard to the overriding objective to deal with proceedings justly when making any decision. The overriding objective includes the need to avoid unnecessary delay.
6. In this case, there are no disputed facts. Miss Tippen does not dispute the Applicant's position or motivation. Mr Reid has been afforded an opportunity to do so but has chosen not to. The Applicant does not dispute Miss Tippen's circumstances or the steps that she has taken. In all of the circumstances, the Tribunal is satisfied that it has enough information in order to make a decision on this case without a Hearing being fixed.
7. Having heard from Mrs Houston and Miss Tippen, the Tribunal finds the following facts to have been established:-
 - a. The Applicant is the Landlord, and the Respondents are the Tenants, of the Property under and in terms of a Private Residential Tenancy Agreement dated 12 June 2020.
 - b. By Notice to Leave dated 22 January 2021, the Applicant gave six months' notice to the Respondents that he required possession of the Property under Ground 1, in that he intended to sell the Property.
 - c. The Respondents began looking for alternative accommodation in or around March 2021.
 - d. In or around July 2021, it became clear to Miss Tippen that the Respondents were likely to separate. At that time, she began looking for alternative accommodation for her and her son only.
 - e. The Respondents separated in September 2021.
 - f. Miss Tippen resides at the Property with her twelve month old son.
 - g. Miss Tippen is in full time employment near to the Property.
 - h. Miss Tippen's son attends a nursery close to the Property.
 - i. Miss Tippen does not require the Property in order to be close to her place of employment or the nursery her son attends.
 - j. The Applicant has recently divorced from his former wife.
 - k. The Applicant is due to make a large capital payment to his former wife on 31 January 2022.
 - l. The Applicant requires to raise finance from his property portfolio in order to fund the capital payment to his former wife.
 - m. The Property is not subject to secure lending.
 - n. The Applicant intends to sell the Property.

8. In terms of section 51 of the 2016 Act:-

"51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”

9. In terms of Ground 1 of Schedule 3 to the 2016 Act:-

“1 *Landlord intends to sell*

- (1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—
 - (a) is entitled to sell the let property,
 - (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, and
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
- (3) 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.”

10. For the reasons outlined above, it is clear that the Applicant is entitled to sell the Property, and intends to sell it for market value as soon as possible. The only extant question for the Tribunal to determine is whether it is reasonable to grant the order.
11. Having had regard to all of the matters raised by the Parties, the Tribunal has concluded that it is reasonable to grant the order. Whilst the Applicant could have sought to raise finance secured against the Property rather than sell it, the Applicant ought to be able to arrange his investments as he wishes. As for the Respondents, there are no special characteristics of the Property that

would favour refusing the order for eviction. There is no local support network that the Respondents rely upon for specialist care or child support. Miss Tippen asserted that she was looking further afield for properties than Kilmaurs.

12. That being said, the Tribunal is minded to afford the Respondents further time to locate alternative accommodation. For that reason, whilst we are satisfied that an order for eviction should be granted, we will supersede enforcement of that order until 10 January 2022. That will allow the Applicant to market the Property for sale and to find a purchaser in the knowledge that, if the Respondents or either one of them remain in occupation as at 10 January 2022, he can take steps to remove them in sufficient time for the Property to be sold and sums realised prior to his 31 January 2022 date for payment to his former wife. That appears to us to be a reasonable outcome in these slightly unusual circumstances.
13. For completeness, the Tribunal is required to determine when the tenancy came to an end. We consider that it came to an end today: 3 November 2021.

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.

Andrew Upton

3 November 2021

Legal Member/Chair

Date