



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/22/4330

Re: Property at 11 Norman Rise, Livingston, EH54 6LY (“the Property”)

Parties:

Mrs Swaleha Korimboccus, 36 Pinewood Park, Livingston, EH54 8NN (“the Applicant”)

Mr Mohammed Saleem, 11 Norman Rise, Livingston, EH54 6LY (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Eviction.

Tribunal Member:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by video conference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant's representative and Power of Attorney Linda Korimboccus was present.

The respondent Mr Saleem was present. He was joined by his son, Tahir Saleem.

A punjabi language interpreter was present to interpret for the Respondent, Sophia Rehman and she joined and interpreted the proceedings.

The Case Management Discussion calls as a video conference.

3. Background

This case called as a Case Management Discussion previously in April and in June 2023. It was adjourned on the first occasion as the Tribunal considered it required further information from parties to determine the application and in particular the issue of reasonableness;

The Tribunal issued the following directions

The Applicant is required to provide:

- 1. Information regarding the Applicant's additional costs for the property e.g insurance.*
- 2. Information regarding the Applicant's outgoings for her family home and related expenditure.*

The Respondent is required to provide:

- 1. The outcome of the current mortgage application for the property.*
- 2. Details of the adaptations to the property and need for them in respect of the Respondent and his wife.*

The Applicant's representative has complied with the Directions in so far as she could. The Respondents have not lodged any documentation at any stage in terms of the Directions issued.

It was further adjourned proceeding to a Case Management Discussion by video conference. The Tribunal allowed the Applicant's Representatives request to allow one further continuation to await the outcome of the Respondent's new live mortgage application to purchase the property. The Applicant said that there has been no change as the second mortgage application was unsuccessful.

3. Preliminary Matters.

The Applicant's representative advised the Tribunal that the mortgage application in progress at the last case management discussion was

unsuccessful and at an end. Both sisters who are daughters of the Respondent have not been successful.

The Respondent's son who was present said that he had met with a mortgage broker to make his own application for a mortgage to purchase the property. The broker is on holiday and he expects to make contact on their return next week and he is an engineer and he was looking to sort out matters before progressing.

There were no other preliminary matters discussed or raised.

4. Case Management Discussion.

For the Applicant

The Applicant's representative set out that she had been hopeful by now that matters could have been resolved with the family seeking to purchase the property. However she set out that no further progress on that had been made and it had been 18 months now since she issued the notice to leave on behalf of the Applicant. The Applicant's representative remained very sympathetic to the Respondents but the mortgage has gone up further since the last case management discussion. She said the fixed rate ended in August last year. It was not renewed as the property was to be sold. The mortgage started at £240 per month and is now £512 per month due to the recent Bank of England interest rises. The Applicant's representative explained that there remains insurances and incidentals on the property which is not financially viable given the rental income is £600 per month. In the last week the Applicant's representative has had to subsidise repairs to the property personally as there is no monies.

The Applicant's representative set out that her step mother, the Applicant is 76 years of age. She remains in Mauritius and is at present unwell so has not returned to her property in Scotland, which remains available for her. The property is now costing the Applicant money and it not being sold is having a detrimental effect on the Applicant and her wider family. The Applicant's husband died in November 2021 and this property was his only asset. The Applicant does not wish to be a landlord, is in poor health and seeks to release equity for retirement purposes. The Attorney in Scotland has the significant burden of managing the property and has recently personally funded repairs and detailed the significant time she has had to spend on managing the property. She has a 9 year old daughter and provides assistance to her own mum who is not in the best of health. She is working, has her own business and is studying for a PHD. The Applicant's representative did not consider that the Respondent's family had acted with significant urgency.

For the Respondent

The Respondent's son said that the Respondents would prefer to stay in the property and they remain settled. The Respondents have applied for local authority housing but the local authority have not responded back to this. The

Respondent's daughter applied last year for housing. The Respondents do not have anywhere to go. The Respondents are 87 and 75 years. The Respondents accept the Applicant requires to sell the property and they did not dispute anything raised or lodged for the Applicant. The Respondent said the Applicant's late husband explained the Respondents could stay in the property as long as possible. The Respondent's son said he is an engineer and has MOD security clearance. He is looking to hold off on his next level clearance to make an application himself for a mortgage for the property. His mortgage broker has asked for further information and he hopes to make an application soon.

5. Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondents did not challenge any material matters. Both the Applicant's representative and the respondent agreed on all material matters before the Tribunal.
2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property. The Applicant had lodged and granted a Continuing and Welfare Power of Attorney in favour of her stepdaughter, Linda Korimboccus who conducted the proceedings with such authority to do so.
3. The Tribunal was satisfied that the tenancy was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and dated 31st May 2020. The lease purported to be a Short Assured Tenancy but in terms of the provisions of the Private Housing (Tenancies)(Scotland) Act 2016 the lease is a Private Residential Tenancy.
4. The Applicant was relying on Grounds 1 and 1A, under Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (as amended by the Cost of Living (Tenant Protection) (Scotland) Act 2022), of the 2016 Act.
5. The Applicant further relied on the financial information lodged regarding the mortgage and costs to the Applicant of the property. The Tribunal had previously directed information to be lodged by the Applicant. The Applicant had lodged a draft Home Report for the property dated 31st May 2020. The Notice to leave was dated 22nd February 2022. The Application dated 2nd December 2022 stated that an order was sought in terms of Grounds 1 and 1A.
6. A valid Notice to Leave had been served on the Respondents dated 22nd February 2022.
7. The Tribunal was satisfied that the Applicant intended to sell the property and she sought to do so to alleviate financial hardship. The mortgage for the property had risen from £240 to £512. The Applicant inherited the property from her late husband and there is equity in the property. The Applicant cannot financially meet the cost of repairs, insurance and other incidentals and the property is not financially viable. The Applicant is elderly and is 76 years of age, unwell and resides currently in Mauritius.
8. Notice to the Local Authority had been given on 2nd December 2022.

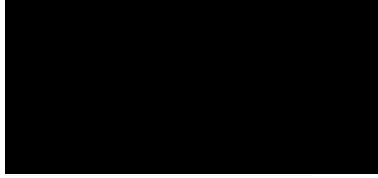
9. The Tribunal was aware the Respondents were also elderly and they were 87 years and 75 years old respectively. They had sought alternative housing with the local authority without success to date. They accepted that the Applicant required to sell the property and did not challenge same. They wanted further time to try and have family purchase the property with a mortgage.
10. The Tribunal was satisfied it was reasonable to grant the Order in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 on balance. The Applicant the Tribunal considered, sought to sell the property and to do so to alleviate financial hardship. She was 76 years of age and now widowed. The mortgage had increased from £240 to £512. The Applicant cannot meet the costs of maintaining the property which was a rental property of her late husband who died in November 2021. The Respondents were vulnerable and attempts and continuations have been made to enable them to look at alternatives. However no live application for a new mortgage is made and on balance the order is reasonable.
11. Accordingly in terms of Section 51 of the 2016 Act the Tribunal granted an Order against the Respondent for Eviction.

Reasons for the Decision

The Tribunal heard evidence from the Applicant's representative and the Respondents over a few hearings. There was a good relationship with parties and no material facts were in dispute. The Respondents agreed the Applicant sought to sell but they instead wanted to continue matters to allow for their family to purchase same. Mortgage applications to date had been unsuccessful. The Tribunal had been mindful of the vulnerability and age of both parties and had allowed matters to be adjourned on 2 occasions to see if matters could resolve. They also directed further information to look at the financial hardship of the Applicant who sought to sell the property. The Applicant's representative was very credible and understanding but required to take steps now to bring matters to a conclusion in view of the financial hardship of the Applicant and the considerable stress this was placing on the wider family. The Tribunal noted the Respondents had had the opportunity to lodge further information and had not done so. On the basis of the information before the Tribunal which was not in dispute on balance the Tribunal determined it was appropriate and reasonable to grant an Order for Eviction.

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

7th September 2023

Date