



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/22/1248

Re: Property at 2 Leonach Place, Elgin, IV30 6JT (“the Property”)

Parties:

Mr Kevin Halligan, 12 Wood Avenue, Bootle, Merseyside, L20 9EW (“the Applicant”)

Mrs Helen Teasdale, 2 Leonach Place, Elgin, IV30 6JT (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -

- (1) the tenancy agreement,
 - (2) the notice to leave with evidence of service
 - (3) section 11 Notice with evidence of service
 - (4) house sales agreement
3. The applicant and his agent, Mr Beck from Cluny Estate Agents appeared. The respondent also appeared. The respondent had submitted an email prior to the case management discussion and the applicant had had sight of this email.

Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 1 (intention to sell). The applicant advised that he was in the RAF. His plan had been for him and his family to live in the property forever. He had however been posted to various places, including in the USA and Lincoln since 2014. He advised that the RAF had told him that they did not plan for him to return to his posting near Elgin. He advised that he currently resides in Lincolnshire with his family. His children are at school. They rent RAF accommodation. He wants to sell the property in order that he can buy a forever home for his family in Lincoln. He does not want to move his children again. They are now settled at school. He will not now return with his family to Elgin. He advised that keeping the property placed a financial strain on him and his family. He advised that the mortgage for the property was £1200 per month. The rent he receives is £850 per month. He pays a letting agent charge. He has maintenance to pay from the rent too. He is charged 40% tax on the rent received. He pays £800 per month for his rented RAF accommodation. He could not afford to keep the property.
5. He advised he had been a good landlord, and he was sorry to have to sell the property and the difficulty that this would cause the respondent, however he had to do so for his own family's needs.
6. The respondent advised that she was not opposing the order sought. She did not challenge any of the paperwork served. She advised that the only reason that she had not left the property already was because she had nowhere else to go to. She resided in the property with her 16 year old child. She had a younger child who mainly stayed with his dad, but also appeared to spend time with her. She was not able to secure a

mortgage. She had been looking for other private rented accommodation, however she advised that there is a very high demand and to date she had not been successful in securing any. She had contacted the local authority (and also local housing associations) she was on the waiting list; however, she did not expect to receive anything soon. She was apologetic for any inconvenience she had caused the landlord but she had had nowhere else to go.

Findings in Fact

7. The Tribunal found the following facts established: -
8. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 March 2021.
9. The tenant was Helen Teasdale.
10. The landlord was Kevin Halligan.
11. The property was 2 Leonach Place, Elgin.
12. There was submitted a notice to leave dated 21 October 2021, stating that an application would not be made until 25 April 2022. It sought eviction under ground 1 - your landlord intends to sell the let property.
13. The notice to leave had been delivered to the tenant by recorded delivery mail. There was evidence of service.
14. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority on 29 April 2022.
15. There was a copy of a document entitled "Cluny Estate Agents Ltd House Sales Agreement Terms and Conditions. It was in the name of Kevin Halligan and it authorised Cluny Estate Agents to sell the property, 2 Leonach Place, Elgin. It was dated 31 May 2022.
16. The title deeds for the property show that Kevin Halligan is a joint owner of the property.

17. It appeared that the applicant had instructed Cluny Estate Agents Ltd to market the property for sale, and that he was entitled to sell the property.

Reasons for Decision

18. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

19. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms :-

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord— (a) is entitled to sell the let 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.

(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.

20. Both parties appeared. The respondent did not oppose the order sought. The applicant appeared and confirmed that that he wished to proceed to sell the property. The applicant had submitted documentary evidence in support of the application. The documentary evidence also confirmed which solicitors had been appointed to sell the property. The title deeds showed that the landlord and applicant was joint heritable proprietor of the property, he therefore had title to sell it.

21. Given that it appeared that the terms of ground 1 were met. The tribunal required to proceed to consider if it would be reasonable to grant the order. We took into account the parties submission, in particularly, that the applicant had a clear reason why he wished to sell the property. This had been the family home, however as he was in the RAF he had been posted to work in other areas since 2014. He was now not planning

to return to the property, his children were settled in schools in Lincolnshire, and he wanted to buy a family home there for his family. Keeping the property in Elgin at present was costing the applicant money and having a detrimental financial impact on him.

22. We noted that the respondent did not oppose the order and was in fact apologetic for having not moved out sooner. We took into account that she resided in the house with her 16 year old child and appeared to have contact with her other child in the property too. We also noted that she had remained in the property as she had nowhere else to go, and the demand for private rented accommodation is very high and there is no available social housing for her. It appeared to us that she had done all she could to try and find other suitable accommodation.

23. The tribunal had a great deal of sympathy for the respondent, however, as the applicant is the heritable proprietor of the property, this had been his family home, and he wanted to sell it in order to buy a property for his own family to live in, and it appeared that he could not do both, then the reasons why he sought the order were on balance more compelling than the respondent's need to remain. The tribunal were prepared to grant the order for recovery of possession. We consider that it would be reasonable to grant the order for eviction.

Decision

24. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

Legal Member/Chair

29 August 2022
Date