



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/23/0390

Re: Property at Rowan Cottage, Drumsmittal, North Kessock, IV1 3XF (“the Property”)

Parties:

Mrs Elizabeth Ross, Culbin, Drumsmittal, North Kessock, IV1 3XF (“the Applicant”)

Mr Mark Rodgers, Rowan Cottage, Drumsmittal, North Kessock, IV1 3XF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. By application, dated 6 February 2023, the Applicant sought an Eviction Order against the Respondent under Section 5 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 1A of Schedule 3 to the Act, namely that the landlord intends to sell the Property to alleviate financial hardship.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 7 February 2020 at a rent of £675 per month, and a Notice to Leave, dated 10 November 2022, citing Ground 1A as the Ground on which the Applicant was seeking an Eviction Order and advising the Respondent that an application to the Tribunal would not be made before 5 February 2023.

3. The Applicant also provided the Tribunal with a copy letter of 8 November 2022 from her accountants, Highland Accounting Practice CA, Inverness, a letter of 4 November 2022 from Graham & Sibbald, chartered surveyors, confirming that they would undertake a Home Report as and when the Property became vacant and a letter from South Forrest, solicitors, Inverness, providing their fee quote for the sale of the Property and attaching their letter of engagement. The letter from the accountants related to the future of the Applicant's business. They stated that it would not be prudent to increase existing borrowings, and that, while a COVID grant had assisted the business in 2020/21, profits were down significantly in 2021/22. In their view, the best option would be to realise an asset now, to enable repayment of the existing borrowing and remove the need for additional borrowings at the ever-increasing interest rate.
4. On 23 February 2023, the Tribunal issued a Direction requiring detailed financial information from the Applicant. She provided this on 11 and 12 March 2023. She stated that there was no future without money to finance her business. If the Eviction Order was refused, it was not only her rental properties that would be at risk, it would also be her home, as the income from the rentals and her widows' pension were her regular income. She needed the eviction to take place to allow her to sell the Property to alleviate the financial stress on her business and on herself. In the last two years, she had made a concentrated effort to lighten her finances. There were always financial issues that could occur outwith the normal running of the business and in her personal life. As an example, a property had been untenanted, a tenant had caused damage and she had had to replace a septic tank. She also had to take into account that tenants might not or be unable to pay their rent. This was a big risk factor to her business. The present cost of living crisis was also taking a toll on both her business and personal finances. All of her properties were in need of work and upgrades, which she would have to finance. The solution would be to sell the Property. It was the way forward to alleviate her financial hardship. It was a business decision designed to keep her business and herself secure.
5. The Applicant provided various documents to her written submission. They included a letter from her accountants confirming her monthly income from rented properties to be £2,875. They added that increased regulation was making the return on investment less and less. The Applicant's age prohibits her from getting another mortgage, and increasing borrowing costs mean that it would make financial sense if she could realise funds to clear her existing borrowings and safeguard the remaining properties, rather than getting into further debt.
6. The Applicant also submitted copies of the Accounts for her business. In the year to 31 May 2021, they showed a gross profit before depreciation of £27,531 on a turnover of £48,819. In the following year, to 31 May 2022, the turnover was £34,556 with a gross profit of £16,421. The rental income and croft income was £32,954 in the first year and £40,082 in the second year.

7. On 5 April 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 26 April 2023. On that date, the Respondent made written representations to the Tribunal. He stated that the Applicant was making the application primarily based on rent arrears, but the Notice to Leave stated only one Ground, namely Ground 1A. He asked the Tribunal to find that the Applicant had failed to prove financial hardship. Her major debt was said to be a loan from Bank of Scotland with a balance of £16,435.92, but the monthly repayments were only £275. He questioned why the Applicant had not sold Cherry Cottage when it became vacant in late 2022/early 2023. It had become vacant after the Notice to Leave was served on the Respondent. That would have avoided any eviction. His view was that the present application had been retaliation for his having applied to the Tribunal for a Repairing Standard Enforcement Order. Granting an Eviction Order would be disproportionate, where there are no rent arrears and insufficient evidence of financial hardship.
8. A planning certificate allowed Cherry Cottage to be sold separately from the remainder of the croft, provided it was used for holiday letting purposes only and not as a private residence for more than 3 months in any calendar year, but the Applicant had then re-let on a private residential tenancy basis in the full knowledge of the planning position.

Case Management Discussion

9. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 11 May 2023. The Applicant was present and was represented by Mr Martin Smith of South Forrest, solicitors, Inverness. The Respondent was also present.
10. The Applicant told the Tribunal that her business income comprised the rent from the 4 cottages. It was a small croft and she owned 4 cows, presently with 2 calves. There are sheep on her ground at the end of the year, but it is a neighbouring arrangement and no money changes hands. She could also sell the occasional calf.
11. Mr Smith referred the Tribunal to the letter from the Applicant's accountants, setting out the reason for her requiring to sell an asset. The reason for selling this particular Property is that it is held on a title separate from the other cottages on the croft and is subject to a security in favour of the Bank of Scotland. Each of the other 3 cottages was, historically, subject to a planning restriction on sale as separate subjects. These conditions were withdrawn, but new conditions now apply whereby they cannot be sold as someone's residence or for long-term rental. The present Property, however, can be sold and achieve a proper market price.
12. The Respondent pointed out that the Applicant has re-let Cherry Cottage in direct contradiction to the new planning consent. There was nothing to prevent her from marketing any of the other cottages for sale as Airbnb or holiday lets. She could also sell the present Property with a sitting tenant.

13. In response to a question from the Tribunal as to why it was a matter of such urgency to sell the Property, when she was receiving rent for all 4 cottages, the Applicant said that her income is right across everything she owns, and all repairs come out of rents. Her income had been £18,000 in 2020 and it is now -£3,000. Every penny she spends comes out of rental income, as she had to give up a bed & breakfast business. She confirmed that she receives a state pension of £207.79 per week.
14. The Respondent estimated the Applicant's income at £40,000-£45,000 per annum. She had a debt of £16,000 but the monthly repayments were less than £300, and the rent being paid by the Respondent was £735. No other debt had been cited and the statement by the Applicant that she was losing £3,000 per annum was not substantiated. She could have mitigated her situation by selling Cherry Cottage.
15. Mr Smith asked the Tribunal to find that the requirements of Ground 1A have been met. The Applicant is entitled to sell, she is suffering financial hardship and she intends to alleviate that hardship by selling. The Respondent could rent elsewhere in the area. The Tribunal should have regard to the accountants' recommendation rather than the Respondent's interpretation of the Applicant's finances. There was no rational basis for suggesting that the present Property is not the one to sell.

Reasons for Decision

16. The Tribunal considered carefully all the evidence, written and oral before it. The Tribunal appreciated that the Applicant had had to cease operating her bed & breakfast business and that her income had suffered as a result. The Tribunal also accepted that the Applicant's finances would be significantly affected if one of her 4 properties was vacant or a tenant built up significant rent arrears, but the present situation is that all 4 are let and she is receiving income of £2,875 per month, or £32,500 per annum. The Tribunal could not speculate on whether the Applicant might suffer financial hardship in the future. In addition, she is in receipt of a pension of £10,800 per annum. Her gross weekly income is, therefore, more than £800. The Tribunal understood the reasoning behind selecting the present Property in preference to one of the other cottages, but was not satisfied that someone with an annual income exceeding £43,000 and debt being serviced at less than £300 per month could be said to be suffering financial hardship. Accordingly, the Tribunal did not accept that the Applicant requires to sell the Property to alleviate financial hardship and refused the application.

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.

G Clark

Legal Member/Chair

11 May 2023
Date