



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/0471

Property at 22 Baird Crescent, Condorrat, Cumbernauld, G67 4BZ (“the Property”)

Parties:

Mr John Rae, Mrs Monica Marie Rae, 4 Locksley Crescent, Greenfaulds, Cumbernauld, G67 4EL (“the Applicant”)

Mr Steven James Hainan, 22 Baird Crescent, Condorrat, Cumbernauld, G67 4BZ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, and valuation of the property from an estate agent dated 14 February 2022. The application is based on ground 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property.**
- 2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 26 April 2022. Both parties were notified that a case management discussion (“CMD”) would take place by telephone**

conference call on 6 June 2022, and they were required to participate. The CMD was postponed at the request of the Respondent's solicitor, as the date did not suit. A further CMD arranged for 11 July 2022 was also postponed as the solicitor was unwell. The parties were notified that the CMD would now take place on 15 September 2022 at 10am by telephone conference call. On 4 August 2022 the solicitor withdrew from acting due to continuing ill health.

3. On 16 May 2022 the Respondent's solicitor lodged detailed written submissions and documents. These state that the application is opposed on grounds that the Applicant has not provided sufficient evidence of their intention to sell the property and that it would not be reasonable to grant the application.
4. The CMD took place on 15 September 2022 by telephone conference call. The Applicants participated. The Respondent did not participate and was not represented.

Case Management Discussion

5. Mr Rae told the Tribunal that he has not yet obtained a home report or advertised the property for sale as he is waiting for the tenant to move out before he does so. However, the Applicants still intend to sell the property and have recently been in touch with the estate agent who carried out the valuation to update them on the progress of the application. They intend to instruct this agent to sell the property when it is empty. Mr Rae also advised the Tribunal that both Applicants are nearing retirement age. They have no proper pension provision, other than the properties that they own. They have recently sold one of these and still own nine, although a couple of tenants have expressed an interest in the properties they occupy. They plan to sell all of them in due course to fund their retirement. They have a mortgage over all the properties that they own.
6. The Tribunal noted that the submission lodged by the Respondent's solicitor provides some information about his circumstances, although it is a few months out of date. Mr Rae told the Tribunal that he has had no recent contact with the Respondent because the solicitor wrote to him and instructed him to stop all direct contact. He last spoke to the Respondent in June 2022. Mr Hainan told him that he was working towards his HGV license and was looking forward to working in that field. Prior to this Mr Hainan had been in receipt of benefits and £360 of his monthly rent was paid by the DWP. Mr Hainan was due to pay the shortfall but had incurred arrears. In May 2022 the DWP payments stopped. Mr Rae contacted the DWP and was told that Mr Hainan was in employment and no longer received benefits. Since then, only £200 has been paid to the rent account and the arrears now stand at £4471.55. Mr Rae said that he messaged Mr Hainan to ask for details of the new employer but did not get a response. Although he has had no recent contact, Mr Rae assumes that Mr Hainan is still living at the property. He told the Tribunal that he previously had a good relationship with him. When he first moved in Mr Hainan told the Applicants that he hoped to have contact with his children, and they did stay from time to time.

However, the contact seems to have stopped and the second bedroom was being used as a home gym the last time he was at the property.

7. Mr Rae concluded by saying that the lengthy process to get the property back has been stressful. In response to a question from the Tribunal about the delay between the expiry of the notice period in November and the application being submitted in February, Mr Rae said that the Applicants had wanted to give Mr Hainan some further time to secure accommodation and did not want to recover the property from him during the winter and Christmas period.

Findings in Fact

8. The Applicants are the owners and landlords of the property.
9. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
10. The Applicants are entitled to sell the property.
11. The Applicants intend to sell the property when it becomes vacant.
12. The Respondent has incurred rent arrears of £4471.55.

Reasons for Decision

13. The tenancy started in November 2018. The application to the Tribunal was submitted with a Notice to Leave dated 24 May 2021 together with a letter from the Respondent confirming that he received the Notice on this date. There is also a handwritten note on the copy Notice, signed by the Respondent, which states "I confirm I have received this Notice to Leave today 24.5.2021 my preference to receiving an email." In the Respondent's written submissions, it is pointed out that the tenancy agreement stipulates that Notices are to be served by email but that the notice was hand delivered on 24 May 2021, the Respondent accepts that there has been valid service and the correct notice period had been given.
14. The Notice to leave states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 25 November 2021. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicants have complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

15. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 1 of Schedule 3 (as amended by the Coronavirus (Scotland) Act 2020) states “(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 ”
16. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell same. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicants intend to market the property for sale when it becomes vacant. In the written submissions, the Respondent argues that the Applicant’s failure to obtain a home report and list the property for sale demonstrates a lack of “genuine intention to sell the property.” The Tribunal is not persuaded by this argument. The Applicants served notice on the Respondent in May 2021. Some 16 months later, the property is still occupied by the tenant. The Applicants are entitled to wait until the property is empty before incurring the cost of a home report and marketing, particularly since they are unable to commit to a date of entry while the tenant remains in occupation. The Tribunal therefore concludes that the eviction ground has been established.
17. The Tribunal notes that the Applicants decided to market the property for sale to fund their retirement. They own a number of properties and are taking steps to sell these as they are approaching retirement age. The Tribunal also notes that the Respondent has incurred substantial rent arrears and has made no payment to the rent account for several months. This is having a financial impact on the Applicants who have mortgage payments to meet in relation to the property.
18. The Respondent did not participate in the CMD. The only information provided by him is contained in the written submission lodged by his former solicitor in May 2022. It is therefore out of date. The Applicants were able to provide some additional information but have had no recent direct contact with the Respondent, following an instruction from his solicitor. The submission indicates that the Respondent was looking for work and alternative accommodation. However, Mr Rae advised the Tribunal that universal credit payments to the rent account stopped in May. He made enquires and was told by the DWP that the Respondent was in work so benefits had stopped. Since then, only three small payments have been made and the arrears have escalated. Mr Rae also advised the Tribunal that although the Respondents children had stayed from time to time in the past, contact was no longer taking place and the spare bedroom is now used as a home gym. This is confirmed in the Respondent’s submission. In the Respondent’s submissions, it is claimed that he has experienced mental health difficulties and that medical evidence could be obtained. However, although several months have elapsed since the

submission was lodged, no evidence has been lodged.

19. Having regard to the information available about both parties and taking into account the rent arrears and the fact that the Respondent has had 16 months to find alternative accommodation, the Tribunal is satisfied that it would be reasonable to grant the eviction order.

20. The Tribunal therefore concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

Decision

21. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

15 September 2022