



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/22/1291

Re: Property at 36 Craigton Avenue, Milngavie, G62 7SX (“the Property”)

Parties:

Mr Barrie McKirdy, Mrs Debbie McKirdy, 49 Dumbrock Road, Bearsden, G62 7RB (“the Applicants”)

Mrs Maureen Margaret Muir, 36 Craigton Avenue, Milngavie, G62 7SX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

By application, received by the Tribunal on 5 May 2022, the Applicants sought an Eviction Order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 2 November 2020, and a Notice to Leave dated 19 August 2021, advising the Respondent that the Applicants intended to apply to the Tribunal for an Eviction Order under Ground 1 of Schedule 3 to the Act and that the application would not be made before 22 February 2022. The Applicants stated in the application that they had arrears on the mortgage over the house in which they live of ££16,676.42. They provided a copy of a letter of 11 April 2022 from Natwest, confirming the arrears at that figure.

On 16 June 2022, 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 7 July 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 1 August 2022. The Applicants were represented by Mrs Shabeilla Saddiq of TCH Law, Hamilton. The Respondent was also present.

Mrs Saddiq told the Tribunal that the mortgage arrears over the Applicants' home remained the same. There was also a second loan secured over that property. There were, in addition, mortgage arrears of approximately £459 over the let Property. Pre-pandemic, the Applicant Mrs McKirdy was a self-employed nail technician. She had been unable to work due to lockdown restrictions and had only started back at work approximately two months ago. Her husband is in full-time employment. The Applicants have a short-term arrangement with NatWest whereby they are paying a monthly sum towards the arrears, but they really need to be able to pay off the arrears, as the arrangement is only short-term. They have two children, aged 17 and 20, both in full-time education and to whom they have financial commitments. They do not own any other properties. A house in the same area as the Property had recently sold for £181,000, and the sale of the Property would produce sufficient sums to clear all mortgage arrears on both properties.

The Respondent told the Tribunal that she and her two children returned to live in Scotland after the death of her husband. She is a carer for her mother, who lives in Milngavie. Her daughter is about to enter 4th year at the local secondary school and her son, who is 23, works locally and still lives at home. The Respondent has been trying to obtain another property to rent, as she appreciates that the Applicants are in financial difficulty, but there are no 3-bedroomed houses available for let privately in the Milngavie area at a rent that she could afford, and she has, so far, been unsuccessful. She has been on the Council waiting list for two years, but if she is offered housing, it could be anywhere in the East Dunbartonshire area, which stretches as far as Kirkintilloch, Bishopbriggs and Lenzie. She and her family need to be able to live in Milngavie or Bearsden. The Respondent does not drive, so caring for her mother would be much more difficult if the family had to live further afield. She would not want her daughter to have to move school at this point in her education. She understood that the combined value of the Applicants' two properties was at least £600,000.

The Respondent told the Tribunal that she had put the Applicant in touch with someone who might be willing to purchase the Property, with the Respondent and her family remaining as tenants. She understood that a meeting had taken place on Thursday 28 July, but was not aware of the outcome. Mrs Saddiq confirmed her understanding that the meeting had taken place, but that no offer had yet been made by the third party. She stated that the mortgage arrears had all arisen during the COVID-19 pandemic.

The Tribunal sought the views of the Parties as to whether they were content for the Tribunal to decide the application without a Hearing. Mrs Saddiq stated that she was

content that the Tribunal had before it all the information and documentation she wished it to have in arriving at its Decision. The Respondent said that she would prefer that the Tribunal await the outcome of the meeting that had taken place between the Applicants and a third party regarding a possible private sale, which would allow the Respondent and her family to remain in the Property.

Ground 1 of Schedule 3 to the Act states that it is an Eviction Ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, provided the Tribunal regards it as reasonable to issue the Order. Evidence tending to show that the landlord has that intention includes a letter of engagement from a solicitor or estate agent or a recently prepared Home Report.

The Tribunal was satisfied that the Applicants had provided sufficient evidence of their intention to sell the Property. Accordingly, it only remained for the Tribunal to decide whether it was reasonable to issue an Eviction Order. The view of the Tribunal was that it was unable to determine this question on the basis of the information and documentation before it. The Tribunal had not seen an up-to-date mortgage statement from NatWest, nor had it details of the amounts outstanding on the second security over the Applicants' home or the security over the let Property. The Tribunal would also require to know whether the arrears had begun pre-pandemic and what the level of arrears was when the tenancy was granted, as the Applicants could, presumably, have decided to sell at that point, rather than to enter into a lease with the Respondent. There was also the possibility of a private sale and the position should be clarified by the date of the Hearing.

Having considered all the facts and circumstances and the evidence before it, the Tribunal decided to continue the application to an evidential Hearing and, meantime to issue appropriate Directions to the Parties.

On 18 August 2022, the Applicants' solicitors provided copies of NatWest statements in respect of the mortgage over their home and of an agreed Payment Arrangement for the six months to 30 November 2022. The mortgage statements showed no payments having been made from March 2020 until November 2020, payments of differing and lower sums until March 2022 and regular payments thereafter. The Payment Arrangement provided for payments of £1,532 per month until 30 November 2022, when they would revert to the normal monthly payments of £1,352. On 6 September 2022, the Applicants' solicitors provided copies of Birmingham Midshires Building Society mortgage statements in respect of the let Property. These were for the original mortgage and for a further secured loan. The respective balances were £132,313.34 and £18,992.44 as at 8 August 2022. The Applicants had taken advantage of a Payment Holiday from June to October 2020, due to the effects of the COVID-19 pandemic. This had increased the balance due on the mortgage account by some £1,430.

On 17 August 2022, the Respondent provided written representations to the Tribunal. She advised that a third-party investor had offered to pay £152,000 for the Property, with the Respondent remaining as a tenant. This offer had been rejected by the Applicants. In 2021, the Applicant's letting agents had indicated to her

following an inspection that the Property's value was £150,000-£160,000, as it needed to be rewired and might need a new bathroom suite. She knew that the Applicants had stated that a nearby property had recently sold for £181,000, but it had been recently updated and a new kitchen added. She understood it had sold for £179,000. The true price of these ex-Council 3-bedroom flats as indicated on the Rightmove website in recent years was £130,000-£165,000. The sale to the third party would have allowed the Applicants to pay off their debts and avoid the Respondent and her family becoming homeless. She understood, from the evidence led at the Case Management Discussion, the Applicants' financial position. She had been concerned before taking on a private tenancy about what would happen if her landlord stopped paying the mortgage but had been assured by the letting agents that they had been letting the Property for years. The Applicant, Mr McKirdy, had retained his job, without being furloughed, throughout the pandemic, and the Respondent understood that Mrs McKirdy had now been working for two months.

The Respondent said that she had been looking for a 3-bedroom property since receiving the Notice to Leave, but there are hardly any private lets and those currently advertised had rents between £1,200 and £2,000 per month. She had also been in touch with the local authority and had been on their waiting list for nearly two years. The Council had advised her to stay in the Property when she had received the Notice to Leave. They had also told her that she had a very low chance of getting anything in Milngavie and that she might be offered a house as far away as Lenzie or Lennoxton.

The Respondent said that she needs to live in Milngavie. She was originally from there and had lived in the Canary Islands for 27 years before her husband's tragic death. She had then made the decision to return to Scotland for family support for her and her two children. Her mother, brother and sister all stay in Milngavie and she is a carer for her mother, who is 87, as she is only 5 minutes away. The Respondent works as a receptionist/administrator in a nursing home. Her daughter attends Douglas High School in Milngavie and the Respondent does not want her to have to move school, after all that she has been through. She is 14 and is studying for her National 5 qualifications and has made good friends at the school. Her son is 23 and lives with her. He works locally as a football coach with East Dunbartonshire Council. He also works at a local supermarket and is a voluntary football coach with two local community teams in Milngavie. The Respondent stated that if she could secure a local authority house in Milngavie, she would move out of the Property immediately.

Hearing

The Hearing scheduled for 19 September 2022 was postponed, as that was the date of the funeral of HM Queen Elizabeth II. It took place by means of a telephone conference call on the morning of 11 October 2022. The Applicants were present and were represented again by Mrs Shabeilla Saddiq of TCH Law, solicitors, Hamilton. The Respondent was also present.

Mrs Saddiq went through the various mortgage statements that she had submitted. In relation to the Applicants' home, a Payment Agreement had been reached, whereby the Applicants would pay £150 per month in addition to the normal monthly payments, but this arrangement would end in November 2022. The current balance

on the mortgage over the let Property was approximately £134,000, with an additional secured loan of approximately £19,000.

Mrs Saddiq then called Mr McKirdy as a witness. He told the Tribunal that in March 2020, he was employed as a lead procurement manager with a renewable energy company. He had been promoted to Head of Procurement with the company in December 2021. Prior to the pandemic, his wife had worked as a self-employed nail technician, but her business had died during lockdown and their monthly income had dropped by £700-£800 as a result. He had been unable to pay all the bills from his salary alone and had arranged a mortgage holiday in respect of the loan over their home for a period of 6 months, his understanding being that 6 months would be added to the term of the mortgage. Demand for his wife's services did not return after lockdown and a health condition meant that she was unable to resume her work. The Property had been empty for about one month between the previous tenant moving out and the Respondent moving in. Asked by the Tribunal if he had considered selling the Property before re-letting it, the Respondent said that prices at that time were £148,000-£150,000 and that would have left the Applicants in negative equity.

Mr McKirdy estimated the value of the Applicants' home at £430,000-£440,000. The mortgage was just over £16,000 in arrears. At the beginning of 2022, the Applicants had resumed the monthly payments in full, due to his increased salary, but the arrears had only reduced by £600 with the additional £150 per month under the payment arrangement with NatWest. He confirmed that the mortgage is a 5-year fixed rate product until 2027. His salary had increased by £10,000 to £85,000 per annum on his promotion. Mrs McKirdy had, since October 2021, been working from home as a full-time customer services agent, earning £1,400 net per month. The Applicants have two children aged 18 and 20, both living at home, and Mrs McKirdy's mother also lives with them and they support them all financially.

In relation to the suggested sale to a third-party investor, Mr McKirdy that the offer made to him in August 2022 had been £152,000, but that was way off the open market value and would still have left them in negative equity when the mortgage and secured loan were paid off, so he had declined it. He had heard nothing further from the third party. He had been advised that the open market value is around £175,000 and a sale at that level would enable the Applicants to clear the arrears on the mortgage over their home.

The Tribunal put it to Mr McKirdy that the Applicants were now far better off than they had been pre-pandemic. Mr McKirdy responded that their outgoings had also increased and cited the cost of electricity as an example. He had also had to acquire a new car which is costing £600 per month in leasing charges through his work on a salary sacrifice basis. The Applicants also had overdrafts on their bank accounts. They had never intended selling the Property, hoping that the rent would cover the costs, but the rental was now loss-making. There are arrears of approximately £440 on the mortgage over the Property. He contended that there appeared to be plenty of flats in Milngavie advertised on the internet as being available for rent at the moment.

Mrs Muir told the Tribunal that there are at present two properties listed as available for rent in Milngavie, one at a monthly rent of £1,800. None of the places she can afford have 3 bedrooms. She questioned Mr McKirdy further about the third party offer to buy the Property, as it would have meant that she and her family could remain there. He repeated that the offer had been less than the Property is worth.

Mrs Muir was then invited to give evidence on her own behalf. She told the Tribunal that she had nothing to add to her written representations. Questioned by Mrs Saddiq, she said that she had not been working when the tenancy began. She had been living off savings. Her intention had been to look for work after three months, but the pandemic restrictions had disrupted her plans. Prior to taking the tenancy the family had been living with her mother. The Respondent had taken up work in February 2022 as a part-time receptionist at a local care home. She travelled to and from work by bus. There was an hourly bus service. Her brother and sister helped in caring for their mother, but they worked shifts. She had attempted to find alternative accommodation. She was on the Council waiting list but could then end up anywhere in East Dunbartonshire. She wanted to be able to keep her daughter at Douglas High School due to the stage of her education.

In her closing remarks, Mrs Saddiq told the Tribunal that, although Mr McKirdy had had a promotion at work, it has not really assisted in reducing the mortgage arrears because of rising costs. The mortgage rate may rise hugely when the fixed-term product ends and the Respondents' credit rating remains very low for so long as there are mortgage arrears. Mrs Muir said that she felt sorry for the Applicants but pointed out that they live in a big property with a nice new car.

Reasons for Decision

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal had already stated at the Case Management Discussion that it was satisfied that the Applicants intend to sell the Property. The only matter for determination following the Hearing was, therefore, whether it would be reasonable to issue an Eviction Order.

The Tribunal considered carefully the evidence provided by both Parties. The Tribunal was in no doubt that the Applicants are in mortgage debt. The sale of the Property on the open market is expected by the Applicants to realise sufficient funds to clear the mortgage and second security over it and, it is hoped, pay off the arrears on the Applicants' mortgage over the house in which they live. The Tribunal

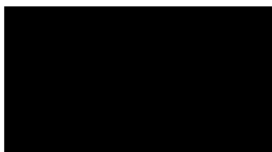
accepted that their decision not to accept an offer from a third-party investor was entirely a matter for the Applicants' discretion. The Tribunal noted, however, that the Applicants had stated that the principal reason for the arrears on their mortgage was the loss of income which resulted from Mrs McKirdy's business having been unable to operate during the pandemic lockdown, with a loss of income to the household of £700-£800 but in evidence Mr McKirdy had stated that she had been in full-time employment since December 2021, with her net salary being £1,400. He also told the Tribunal that his own salary had increased by £10,000 in December 2021. It was clear to the Tribunal that the financial position of the Applicants should have improved very considerably. They had also felt able to take on the commitment of a new car costing £600 per month and there was no suggestion in evidence that they were at risk of their home being repossessed in the near future. They have been fortunate to secure a 5-year fixed term mortgage at a very low interest rate, which runs until 2027, so are protected in relation to that debt, from the exigencies of the financial markets and the general UK economy.

The Tribunal accepted the evidence of the Respondent that it is very important that she can remain in Milngavie. She has caring responsibilities for her mother there, her daughter is at a very important stage of her school education there and her son works there. The Tribunal noted that, were the Respondent to be made homeless, there was no guarantee that she would be re-housed in Milngavie. Indeed, it appeared from her evidence that it was very unlikely that that would happen, and she and her family could be allocated a house in any part of East Dunbartonshire, with the disruption to family life that would result, with her daughter having to move schools, her son being unable to continue with his part-time supermarket job and the Respondent being, potentially, many miles distant from her mother.

Having considered carefully all the facts and circumstances and all the evidence before it, the Tribunal decided that it would not be reasonable to issue an Eviction Order against the Respondent and that, accordingly, the application should be refused.

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/Chair

11 October 2022
Date