



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/23/0044

Re: Property at 81 Cobden Street, Dundee, DD3 6DD (“the Property”)

Parties:

Mr Jon-Paul Anderson, 14 Inveraldie Crescent, Inveraldie, Inveraldie, Dundee, Angus, DD4 0QR (“the Applicant”)

Miss Fiona Simpson, 81 Cobden Street, Dundee, DD3 6DD (“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 determined without a Hearing and issue an Eviction Order against the Respondent

Background

By application dated 3 January 2023, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 1 of Schedule 3 to the Act, namely that the landlord intends to sell the Property.

The application was accompanied by a copy of a Notice to Leave dated 4 October 2022, stating that Ground 1 was the reason for the Applicant seeking an Eviction Order and that an application to the Tribunal would not be made before 28 December 2022.

By email of 1 February 2023, the Applicant sought to amend the application so that it could be made also under Ground 1A of Schedule 3 to the Act, namely that the landlord intends to sell the Property to alleviate financial hardship.

On 21 March 2023, the Tribunal issued a Direction to the Applicant to provide further financial information to assist the Tribunal to decide whether the application should be granted. The Applicant provided detailed information on his finances on 12 April 2023. He is self-employed and is himself in rented accommodation. The fixed-rate deal that he had on his mortgage came to an end just as the Bank of England began to increase interest rates. As a result, his monthly mortgage payments which, under his old deal were £230 per month, have risen to £961.89 from 1 May 2023.

On 18 April 2023, Mr Kenneth Marshall, solicitor, Dundee Law Centre, advised the Tribunal that he was instructed to act for the Respondent. Her position was that she did not know whether the Applicant wishes to sell the Property or has evidence that he requires to do so. If she were to leave, she would be regarded by Dundee City Council as having made herself intentionally homeless.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 18 May 2023. The Applicant and Respondent were both present and the Respondent was represented by Mr Marshall.

The Applicant advised the Tribunal that he had calculated that his mortgage payments would be increased to £1,018.87 per month following the recent 0.25% increase announced by the Bank of England. He confirmed that the rent is £900 per month. He had had no issues whatsoever with the Respondent and there were no rent arrears, but due to the situation in which he found himself, he had no option but to seek an Eviction Order to enable him to sell the Property. His mortgage payments were no longer covered by the rent and he had been unable to secure a better mortgage deal. He had investigated the possibility of selling with a sitting tenant, but this would have realised a much lower sale price than he might achieve on the open market with vacant possession. He had not instructed a solicitor or estate agent as there had been an issue regarding access for a surveyor and he thought it best to wait until he had vacant possession.

Mr Marsall told the Tribunal that the Respondent was not querying the Applicant's financial position. The Respondent stated that she lives in the Property with 4 children aged from 5-15 years and adult son. She has applied to Dundee City Council to be rehoused. Mr Marshall added on her behalf that the Council normally waits until they have a Tribunal Decision before dealing with a potentially homeless family. The Respondent would be happy with a different owner with her family and her as sitting tenants. The issue regarding access for a surveyor had been merely a timing matter, as the request was made just before Christmas.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

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 may 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.

Ground 1A of Schedule 3 to the Act states that it is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship and that the Tribunal may find that Ground 1A applies if the landlord is entitled to sell the let property, is suffering financial hardship and intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Evidence tending to show that the landlord has that intention includes (for example) a letter of advice from an approved money advisor, local authority debt advice service, independent financial advisor or chartered accountant, a letter of engagement from a solicitor or estate agent or an affidavit stating that the landlord has that intention.

The Tribunal was satisfied that the Applicant intends to sell the Property even though he has as yet taken no formal steps to instruct a Home Report or engage a solicitor or estate agent, and that it would be reasonable to issue an Eviction Order under Ground 1 because the rent no longer covers the monthly mortgage payments and the Applicant is making a loss on the rental, even before costs such as insurance and the expense of meeting statutory obligations are taken into account. He had also stated that he would not be able to afford to meet the cost of any repairs to the Property. The financial information that he had provided indicated that the huge increase in his mortgage payments over a very short period meant that it was not economically viable for him to remain a landlord and the Tribunal was satisfied that, whilst he did not have a letter of advice from any of the providers set out in Ground 1A, he had established that he is suffering financial hardship which will escalate for so long as he is making a monthly loss on the renting of the Property. Accordingly, having taken into account all the facts and circumstances and all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 1A.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 would apply to the Tribunal's Decision under Ground 1, but it does not apply to the Decision under Ground 1A.

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

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18 May 2023
Date