



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/22/0083

Re: Property at 0/1 88 Holmlea Road, Cathcart, Glasgow, G44 4AN (“the Property”)

Parties:

Rachel McMaster, 20 Meadow Drive, Cambuslang, G72 6QD (“the Applicant”)

Brian Kissling, 0/1 88 Holmlea Road, Cathcart, Glasgow, G44 4AN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that
Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 25 May 2020.
2. The application was dated 12 January 2022 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 7 July 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, served upon the Respondent by the Sheriff Officer on 9 July 2021 in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice simply repeated “The landlord is selling the property” and that

“It is too early to provide a home report as they only last 3 months” (*sic*). (The application papers did, however, include a Home Report for the Property dated 1 September 2021.) The Notice intimated that an application to the Tribunal would not be made before 10 January 2022.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council on 5 January 2022.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 June 2022. We were addressed by the Applicant herself.

6. On 7 June 2022, the Respondent sent a detailed email to the Tribunal which concluded with his statement that “I cannot guarantee my presence on the call... [b]ut I will try by best.” In light of this email, we held back commencement of the CMD until 10:08 but the Respondent, nor anyone on his behalf, did not dial in (nor did anyone do so prior to the conclusion at around 10:40). In the circumstances we were satisfied to consider the application in the absence of the Respondent.

7. At the CMD, the Applicant confirmed that the application for eviction was insisted upon. She explained that she sought to sell due to financial reasons, both arising from the economic conditions and her health. She explained:

- a. In 2019, she was diagnosed with a serious medical condition and spent a year off work on half-pay only. She had been a nurse in a spinal unit. (We were provided with submissions on the specific medical condition but do not restate it here.)
- b. On her return to work, she was held to be at high risk of developing a complication arising from the treatment of the condition. This meant she could no longer undertake her previous roll and she was redeployed to a clinic, which meant fewer hours and a loss of ‘antisocial hours’ pay.
- c. Her (and her husband’s) mortgages had increased twice over the last months.
- d. Due to the changes in income, and implications of the type of financial support received during her ill-health, they now had an unexpected tax bill.
- e. Her husband was from North America but two close family members had recently passed away, meaning a number of unexpected transatlantic trips (and the costs associated).

All these matters had combined to place them under financial pressure and she could no longer afford to have the Property rented out, and required to sell it. She said that they had two young children, and the stresses of the last few years had left both her and her husband with anxiety conditions for which they took medication.

8. The Respondent’s email of 7 June 2022 made some references to receipt of documents from “Glasgow City Council” “two weeks ago” which were difficult to understand. The Applicant confirmed that she knew of no involvement of the

Council. The email also referred to seeking legal advice but the Applicant did not know of any solicitor or advice agency becoming involved. In light of this, we proceeded on the basis that the Respondent's reference to documents from Glasgow City Council were actually references to service of application papers and intimation of the CMD (which took place around 4.5 weeks ago), and that the Respondent was unrepresented.

9. The Respondent's email did not explicitly extend any defence or request that the order not be granted at this time. Generally, it was a statement that he thought it had been unnecessary for the Applicant to have taken matters this far; his version of some of the events (as he said the application papers were "entirely one sided"); an explanation of his wife's medical condition and how that affected their home life; and his attempts to obtain new accommodation. He stressed that they had been seeking new accommodation and he was "trying my best to get us out of the property" and that they "will hopefully be out as soon as we can". He said that he had started "our property search from today again".
10. The Respondent's email made various complaints but we read these as directed against the Applicant's letting agent, especially the steps taken by the agents in marketing the Property for sale. The Respondent conceded in the email that he had to "cancel agreed viewings at short notice" due to considerations for his wife, whom he described as having suffered "a mental collapse". (Specific details of her diagnosis were provided in the email but we do not repeat them here.) Due to this, he spent significant time at home caring for his wife, and he did not think there were suitable arrangements he could make to have people attending to view at the Property.
11. Read at their highest, the Respondent's email looked to present a defence on reasonableness on the basis that his wife's current medical position made an eviction a significant trauma to her. Instead he wished adequate time to vacate voluntarily (which steps he had placed on hold until recently due to her condition).
12. The Applicant believed that the Respondent had already received adequate time to find a new Property. She pointed out the date of the Notice to Leave, and its expiry, were some time ago. In regard to the Respondent's wife breakdown, the Applicant referred to email correspondence between her and the Respondent in February and again in April. She was told by the Respondent that the breakdown occurred on 7 February 2022 but that the Respondent's wife's doctors hoped she would be recovered so as to be able to move at the end of April. The Applicant conceded that she focused only on "April" and made contact again on 4 April 2022 asking the Respondent if they had found somewhere to move to as she would need to move on with seeking eviction. The Respondent was said to have emailed back on 28 April 2022 pointing out that he had said "end of April" as the date the doctors had assessed but that he had placed a deposit on a new property but the next day was told it was unavailable, but that he had some other possibilities. (None of these emails were provided to us to read.)
13. In all, the Applicant felt that the Respondent had already had sufficient notice and time to move, and she wished eviction today. She further explained that she had not been able fully to market the Property for sale in the circumstances, as the

Respondent had been unable to confirm some viewing dates and cancelled others at short notice. The Applicant did not know of the specific discussions between the Respondent and her agent, but believed that a reasonable proposal had been made as to how viewings could occur with the Respondent supporting his wife during them. Although there was significant interest in the Property, she could not complete the marketing for sale in the circumstances and withdrew the Property from the market. As a result, she explained that she would have to pay for a new Home Report once it was finally back on the market, plus she had all the costs associated with a further period of owning the Property. Further she now needed to account for any income and costs in a further year's tax return.

14. The Applicant said the Property was a one-bedroom flat and that the Respondent and his wife had no children or dependents living with them there.
15. No motion was made for expenses.

Findings in Fact

16. On 18 May 2020, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 25 May 2020 ("the Tenancy").
17. On 7 July 2021, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondents with notice, amongst other matters, that the Applicant wished to sell the Property.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 10 January 2022.
19. A Sheriff Officer acting for the Applicant served a copy of the Notice to Leave on the Respondent on 9 July 2021.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 Part 1 of the 2016 Act.
21. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on the Applicant's behalf on 5 January 2022.
22. The Applicant obtained a Home Report for the Property on 1 September 2021.
23. The Applicant instructed agents to market, and then place on hold the marketing of, the Property.
24. The Applicant and her family have experienced increasing financial pressures over a period since 2019. To alleviate these pressures, the Applicant wishes to sell the Property.

25. On 5 May 2022, a Sheriff Officer acting for the Tribunal intimated the CMD of 10 June 2022 upon the Respondent.

Reasons for Decision

26. The application was in terms of rule 109, being an order for eviction of a PRT. The Tenancy Agreement did specify that any Notice to Leave should be served by email but there was no reason to doubt that the Notice to Leave, served by Sheriff Officer, was received by the Respondent. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent. Further, in his email of 7 June 2022, no objection to this was taken by Respondent.
27. Ground 1 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
- (1) *...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.*
 - (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.*
28. The Home Report constitutes evidence under paragraph (3)(b) and combined with the submissions by the Applicant (on her financial position and marketing steps taken to date) we agreed that paragraphs (2)(a) and (b) were amply satisfied.
29. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the financial strain she described. Her submissions on the effect this was having on her and her husband's health were not vouched by medical records but we were willing to accept them as further support to her argument on reasonableness.
30. In considering a counter-argument, it was regrettable that the Respondent was not in attendance or represented. The medical position he described was also unvouched but we were also willing to accept it at face value and the Applicant did not take issue with it (though pointed out that recent increased health issues

were said to have arisen after the expiry of the Notice to Leave). There did not appear to be any dispute by the Respondent as to the need for him and his wife to leave the Property, and – as they had remained long after the expiry of the Notice to Leave – we did not see any merit in his arguments that the application was unnecessary. The issue raised by his email (treating it as written submissions) was, at its highest, whether it was reasonable to place his wife at risk of a forced eviction (and the additional mental health strain that would come with it) rather than postpone matters and allow them to leave voluntarily.

31. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant but, in consideration of the Respondent's desire to vacate voluntarily and to seek to avoid the stress to him and his wife of having an eviction scheduled, we saw merit in suspending the date of eviction for around a further two weeks longer than normal (allowing just over six weeks from today's date). The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended to 12:00 on Monday 25 July 2022.

Decision

32. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, suspended to 25 July 2022, further to ground 1 of Schedule 3 of that Act.

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

J. C

J. C

Legal Member/Chair

J. C

Date