



**Decision 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/23/2020

Re: Property at 42 Kirkhill Terrace, Broxburn, West Lothian, EH52 6JG (“the Property”)

Parties:

Mrs Karen Bell, 46 Kirkhill Terrace, Broxburn, West Lothian, EH52 6JG (“the Applicant”)

Mr Wisdom Baah, Miss Emma Walker, 42 Kirkhill Terrace, Broxburn, West Lothian, EH52 6JG (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the respondents

Introduction

1. This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. The Case Management Discussion took place on 17 November 2023 at 10.00 am. As the application was opposed, and the ground for eviction was in dispute, the tribunal continued matters to a full evidential hearing. This took place on 21 February 2024 by teleconference at 10.00 am.

3. The applicant represented her own interests and was accompanied by her letting agent Mr Gavin Smith of Knight Bain Lettings. The respondents both joined personally.

Findings and Reasons

4. The property is 42 Kirkhill Terrace, Broxburn, West Lothian EH52 6JG. The applicant is Mrs Karen Bell who is the heritable proprietor of the property and the registered landlord. The respondents are Mr Wisdom Baah and Miss Emma Walker who are the tenants.
5. The parties entered into a private residential tenancy in respect of the property which commenced on 14 November 2019. The rent was stipulated at £500 per month.
6. The respondent were in a relationship but are now separated. The second respondent left the let property in or about July 2021. The respondents have a daughter together who is aged 4. The second respondent is her primary carer. The first respondent, who remains living in the let property, exercises residential contact with her at weekends.
7. The applicant relies upon ground 1 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to sell the let property. The relevant notice period under ground 1 at the time that the notice to leave was served was one of 84 days.
8. The notice to leave relied upon in this case is dated 17 March 2023 and stipulates that the earliest an application be submitted to the tribunal would be 12 June 2023. This was prepared in accordance with Section 62 of the Act. It is also evidenced that the notice to leave was served upon the respondents by email on 17 March 2023. The required statutory notice was provided. The notice to leave served upon the respondents and relied upon in this application is therefore valid.
9. The first respondent actively opposed the application on the basis that he does not believe that the applicant has the genuine intention to sell the let property. The tribunal concluded that this is on the basis of a generally poor relationship between them and not as a consequence of any factual circumstances which the first respondent sought to rely upon. His views are, in fact, nothing other than mere speculation.
10. The applicant is 62 years of age and her husband is 66 years of age. Whilst the applicant continues to work as a staff nurse employed by the NHS, she is no

longer fit and able to do so other than for the immediate short term due to her health problems. She was diagnosed with bowel cancer in October 2022 and, despite surgery, her cancer treatment continues. She wishes to sell the let property to ingather funds to help her retire. The let property still has a mortgage over it with monthly commitments which are around the same level as the rent she receives. There is, however, a degree of equity within the property which would assist her significantly in her plan to retire.

11. The applicant also owns an adjoining property at number 40. She has evidenced that this other property is actively being marketed for sale. This was placed on the market in December 2023. This fortifies her intentions to sell her let properties. The first respondent had doubted that it was the applicant's intention to sell that other property at the hearing in November 2023 but his doubts have been quashed due to the evidence of the marketing.
12. The applicant has produced a copy of a letter from her agent, Knight Bain Lettings, confirming that they will be instructed in the sale of the let property once vacant possession has been obtained. This letter is dated 26 July 2023. Mr Smith of Knight Bain Lettings was present at the hearing and confirmed that those instructions have been received.
13. The tribunal found the applicant both credible and reliable and attached significant weight to her evidence. The tribunal also found the documentary evidence issued by Knight Bain Lettings to be credible and reliable and attached weight to that evidence, along with the evidence of Mr Smith of the company as he was also found credible and reliable. Other than expressing doubts, the first respondent does not rely upon any particular facts and circumstances which can call into question the applicant's intentions. The tribunal was satisfied beyond any doubt on the basis of the credible and reliable evidence produced that it is the applicant's genuine intention to sell the let property.
14. The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.
15. The applicant's circumstances are as set out above. The tribunal attached a lot of weight to her need to sell the let property given her state of health. It is not reasonable to require her to continue to be a landlord.
16. The second respondent no longer lives in the property and despite her supporting Mr Baah and retaining a relevant interest in the application, she was

not personally oppositional to the application. She has no requirement of the accommodation.

17. The first respondent currently lives in the property alone, other than the times that his daughter at the weekends for one overnight stay. Neither the first respondent nor his daughter are said to have any additional support needs or disabilities.
18. The first respondent is employed as a software engineer and earns £32,400 per year. His immigration status in the UK remains precarious and his previous visa has expired, though he has made a valid in-time application to extend his stay in the UK. That application remains under consideration by the Home Office.
19. The Appellant's right to remain in the UK at this stage, is subject to the condition that he has no recourse to public funds. This restriction means that he cannot obtain alternative accommodation from the local authority despite being made homeless. This is notwithstanding the fact that a relevant Section 11 notice has been issued to the relevant local authority.
20. The first respondent does not drive. His place of employment is in Livingston, West Lothian. The second respondent and his child live in Mid Calder which closely neighbours Livingston. The let property which the first respondent continues to live in is in Broxburn is around 4 to 5 miles away from both his place of work and where his daughter stays. The first respondent has known about the applicant's intention to sell the let property since the time that the notice to leave was served upon him in March 2023, almost one year ago. The first respondent has earnings sufficient to enable him to reasonably source alternative accommodation, either in the private sector or from a Housing Association within a relatively short space of time within the Livingston area which is a major urban area with a population of between 50,000 and 60,000 people. This will fully suit and reasonably meet his own needs in terms of accessing his employment and fulfilling his agreed care arrangements with his daughter at weekends. The first respondent does not require to live in Broxburn.
21. Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order.
22. The expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 means that the earliest the first respondent can be evicted from the let property is 31 March 2024. This is an extended period beyond the standard 30 days ordinarily afforded to a tenant

who is being evicted. In order to fairly and reasonably take account of the first respondent's additional difficulties, due to the fact that he cannot access local authority housing, the tribunal determined to extend the period prior to any eviction taking place for a further one month, namely until 30 April 2024.

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.

R. Mill

21 February 2024

Legal Member/Chair

Date