



The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/2338

Re: Property at 3 Old Mill Court, Garden Lane, Buckie, AB56 1PE (“the Property”)

Parties:

Mr Alexander MacNaughton, Mrs Helen MacNaughton, 6 Woodside Gardens, Westhill, Inverness, IV2 5TF (“the Applicants”) per their agents, Stewart & Watson 42-44 East Church Street, Buckie, AB56 1AB (“the Applicants’ Agents”)

Miss Taylor Sowden, 3 Old Mill Court, Garden Lane, Buckie, AB56 1PE (“the Respondent”)

Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory grounds being established and the statutory procedures having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received on 14 July 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties;
 - ii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to The Moray Council being the relevant local authority and
 - iv) copy instructions to selling agents

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 3 November 2023 at 10.00 by telephone conference. The CMD was intimated to the Parties and, in particular, to the Respondent by Sheriff Officer service on 28 September.

CMD

4. The CMD took place on 3 November 2023 at 10.00. The Applicant was represented by Ms. McCullough of the Applicant's Agents. The Respondent was present and was unrepresented.
5. On behalf of the Applicant, Ms. McCullough confirmed that the Order is sought. She expanded further on reasons for selling and advised that the Applicants are in their seventies, that they now live some distance from the Property and find that managing the rental properties is now a struggle and a burden on them. McCullough stressed that the Respondent has been an exemplary tenant in all respect.
6. The Respondent stated that she opposed the Application because she had no alternative accommodation and had a five year old son.

Findings in Fact

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties which began on 27 March 2009;
 - ii) The Applicants purchased the Property in 2004;
 - iii) The Applicants intend to sell the Property due to their age and retirement;
 - iv) The Applicants intend to sell the Property as soon as they have vacant possession;
 - v) The correct statutory procedures have been carried out;
 - vi) The Respondent is a single parent with a five year old child and
 - vii) The Respondent has not been able to source alternative accommodation.

Issue for the Tribunal

8. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *"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."*
9. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
12. The Tribunal had regard to the facts that the Applicants intend to sell the Property due to their personal circumstances and that they struggle to continue to act as landlords and meet their statutory obligations in that regard. The Tribunal noted that the Applicants purchased the Property and entered into the tenancy agreement prior to the reasonableness test coming into force and at a time when the Ground was a mandatory ground and not a discretionary one. The Tribunal had regard to the Respondent's circumstances and took the view that the homelessness legislation provides a safety net for her and her son. Further, the effect of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is such that any Order cannot be enforced until 31 March 2024 and so the Respondent has a significant period of time to secure housing. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
13. This decision is unanimous.

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

3 November 2023
Date