

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/23/0823

**Re: 1/2 11 Sinclair Drive, Glasgow, G42 9PR
 (“the Property”)**

Parties:

**The late Mr Stuart Ronald Wilson, formerly of 10/166 Therkrasette Road, Naiyang 13/3 1, Phuket, 83110, Thailand
 (“the Applicant”)**

**Mrs Annette Warwell, 1/2 11 Sinclair Drive, Glasgow, G42 9PR
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Elizabeth Williams (Ordinary Member)

Present:

The hearing in relation to case reference FTS/HPC/EV/23/0823 took place at 10am on Thursday 2 November 2023 by teleconference call (“**the CMD**”). The Applicant was represented by Rory Mellis of Thorntons Law LLP (“**Applicant’s Representatives**”). The Respondent was represented by Maureen Smith of Castlemilk Law Centre (“**Respondent’s Representatives**”). The clerk to the Tribunal was Ronald Lee. This case was conjoined with case reference FTS/HPC/CV/23/0540 and heard at the same time.

BACKGROUND

1. An application was made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application form was accompanied by copies of the following:
 - a. Private residential tenancy agreement between the Applicant and the Respondent signed by the Respondent on 5 January 2021 but unsigned by the Applicant (“**Tenancy Agreement**”), which provided for:
 - i. A commencement date of 1 December 2020;
 - ii. Rent payable in advance at a rate of £235 per calendar month;
 - iii. Rent payable on or before the 1st of each month;
 - iv. No rent deposit;
 - v. Notices to be sent to the e-mail addresses set out in it, albeit that no e-mail address was provided for the Respondent.
 - b. Notice to leave addressed to the Respondent at the Property issued by the Applicant’s Representatives dated 6 October 2022 (“**Notice to Leave**”) stating that:
 - i. the eviction ground being used was “Your Landlord intends to sell the Let Property” and referred to an attached copy of an e-mail from the Applicant to the Applicant’s Representatives confirming that he “would wish your firm to act on my behalf with [the eviction application] and the subsequent conveyancing once the premises are vacant” which was stated to have been sent “Mon 09/05” (9 May 2022 being a Monday); and
 - ii. an application would not be submitted to the Tribunal before 6 January 2023; and
 - c. A copy of the relevant notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with covering e-mail sending it to the local authority dated 12 January 2023.
4. A notice of acceptance of the application was issued dated 23 May 2023 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 16 March and 25 April 2023.
5. A case management discussion (“CMD”) was held on 20 July 2023 at which both the Applicant and the Respondent were represented. Directions were issued to the parties dated 20 July 2023.
6. The Tribunal was satisfied that the Applicant’s Representatives were duly authorised by the executors of the Applicant, Balfour & Manson Trustees, to pursue the application.
7. This decision arises out of the hearing.

PROCEEDINGS

8. Ms Smith confirmed that she had had difficulty in obtaining instructions from the Respondent on the basis that the Respondent had been out of the country as a result of a family bereavement and had medical issues. This was the reason why nothing had been submitted in response to the directions issued following the CMD.
9. Ms Smith confirmed that she now had instructions and that the Respondent did not wish to defend the action for the eviction order. She noted that the Respondent wanted to be rehoused but the local authority would not consider her to be homeless unless an eviction order had been issued.
10. Ms Smith confirmed that the Respondent did not consider that it was in her best interests to defend this case.

FINDINGS

11. Notwithstanding that the Tenancy Agreement referred to 2/1 11 Sinclair Place, the Tribunal was satisfied, taking into account the naming convention which usually referred to the floor number first and then the flat number on that floor (which convention was referred to by Mr Mellis at the CMD and based on their own knowledge) that the correct address was 1/2 11 Sinclair Place, being a first floor property (rather than 2/1 11 Sinclair Place, which would have been a second floor property). In reaching this conclusion, the Tribunal took into account that the disposition in favour of the Applicant described the property disposed as the "northmost first floor flat, Eleven Sinclair Drive, Glasgow". The Tribunal had also received evidence of confirmation from the executors of the Applicant that the Applicant did not own any other heritable property.
12. Ms Smith had confirmed during the CMD that the Applicant and the Respondent had been corresponding by e-mail and so, notwithstanding that no e-mail address for the Respondent had been stated in the Tenancy Agreement, she would not seek to argue that the Notice to Leave had not been validly received by the Respondent.
13. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that the Notice to Leave was valid and had been validly served.
14. The Tribunal was satisfied, on the balance of probabilities, that the Applicant had expressed an intention to sell the Property in May 2022 and that steps had been taken thereafter to seek an eviction order. Whilst no further evidence had been provided to support the intention to sell, the Applicant was now deceased and it was not unexpected that the executors would seek to sell the Property in order to wind up the estate of the Applicant.
15. Both representatives made submissions as to the reasonableness of granting an eviction order which are summarised below.

REASON FOR DECISION

16. The Tribunal was satisfied, on the balance of probabilities, that:

- a. the Notice to Leave was valid and had been validly served;
- b. the Applicant (through the executors of the Applicant) intended to sell the Property;
- c. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. The Respondent did not object to the grant of an eviction order;
 - ii. The Respondent wanted to be rehoused and an eviction order would assist in this process;
 - iii. The Respondent had been aware that the Applicant intended to seek an eviction order since May 2022, at which time an earlier notice to leave had been served, which also relied on ground 1 (that application having been unsuccessful);
 - iv. The Respondent had had over 18 months to seek to make alternative accommodation arrangements;
 - v. The Applicant had, since the submission of the application in this case, died and the Property required to be sold in order to give effect to the Applicant's will;
 - vi. It would not be reasonable for the executors to market and sell the Property with a tenant in place (which would likely have an impact on value), particularly as the Respondent was in arrears; and
 - vii. The cost of living moratorium on evictions would apply in this case and so the Respondent could remain in the Property until the end of March 2024.

17. Accordingly, the Tribunal found that ground 1 (landlord intends to sell) of Schedule 3 to the 2016 Act applied.

DECISION

18. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 1.

19. Any enforcement of the eviction order was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Right of Appeal

In terms of Section 46 of the Tribunals (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.



2 November 2023

Chair

Date