



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1617

Re: Property at 43A High Street, Laurencekirk, AB30 1BH (“the Property”)

Parties:

Mrs Maureen Macaulay, Gary Macaulay, 16 Garvocklea Gardens, Laurencekirk, AB30 1BG (“the Applicant”)

Mr Daniel Bielak, 43A High Street, Laurencekirk, AB30 1BH (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:
 1. the tenancy agreement,
 2. the notice to leave with evidence of service
 3. section 11 Notice with evidence of service
 4. copy letter from solicitors confirming instructed in the sale of the let property
 5. tenancy agreement where applicants are tenants

6. copy letter from solicitors confirming sale of applicant's home.
3. The applicants appeared. The respondent also appeared, and with him was his supporter Mr Brown, who spoke for the respondent, as we were advised that the Respondent had limited English language skills.

Discussion

4. The applicants moved to amend their application from ground 4 to ground 1, they had submitted documents in support of the position, they are building a new home, they had sold their home, they had wanted to move into the let property, to live in it while their property was being built, but as they did not get vacant possession they had now rented another property, and they now wished to sell the let property. There was no objection to this amendment by the respondent. The tribunal allowed this amendment.
5. The applicant advised that they were seeking an order for recovery of the possession of the property under ground 1 (intention to sell). They advised that they hoped the sale proceeds would help recover all the additional costs these eviction proceedings had cost them. She advised that they had bought land to build on, they had thought they could have moved into the let property fairly easily and had not been aware of the eviction process, it had taken longer and they had to rent their a property to live in while they were building the house. They now intended to sell the rented property.
6. They advised that they had no dependents living with them. They had another property which they rented out, it was a family home, there was a family in it, they did not wish to sell it as it had been the home of Mr MacAuley's mother, and it was of sentimental value to them.
7. The respondent advised that he did not oppose the order. He was concerned to know when he would be evicted. He asked for some time to find other accommodation. He advised that he had contacted the council and it appeared that they had indicated that he could apply for a council house and would get higher priority once an order for eviction was granted. He is tied to a job in Laurencekirk and he does not drive, so he would hope to get a new home in Laurencekirk if possible. He had been told by the council to choose as many areas as he could. He was living alone in the property. He had no dependents.

Findings in Fact

7. The Tribunal found the following facts established: -
8. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 April 2020.
9. The tenant was Daniel Bielak.
10. The landlord was Gary Macaulay and Maureen Macaulay.
11. The property was 43A High Street, Laurencekirk.

12. There was submitted a notice to leave dated 15 January 2023, stating that an application would not be made until 12 April 2023. It sought eviction under ground 4 - your landlord intends to live in the let property.

13. The notice to leave had been emailed to the tenant. There was evidence of service.

14. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority.

15. There was correspondence in the application explaining why they wished to amend the ground from 4 to 1 intention to sell.

15. There was a letter from solicitors dated 26 April 2023 confirming selling details for the applicant's home.

16. There was a letter from solicitors dated 19 July 2023 confirming that they would act in the sale of the let property.

17. There was a copy of a tenancy agreement showing the applicants as tenants with a commencement date of 1 June 2023.

16. The title deeds for the property show that the applicants are the owners of the let property.

Reasons for Decision

17. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

18. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms :-

1. *It is an eviction ground that the landlord intends to sell the let property.*
2. *The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord— (a) is entitled to sell the let property, and (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.*
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.*

19. Both parties appeared. The respondent did not oppose the order sought. The applicants appeared and confirmed that they wished to proceed to sell the property. The applicant had submitted documentary evidence in support of the application. The documentary evidence confirmed that the applicant had instructed solicitors to deal with the sale of the let property. The title deeds showed that the

landlords were the heritable proprietors of the let property, and therefore had title to sell it.

20. Given that it appeared that the terms of ground 1 were met. The tribunal required to proceed to consider if it would be reasonable to grant the order. We took into account both parties' submissions. The applicants appeared to have a reason why they wished to sell the property, as they were building a new property and they had had to rent a further property while the house was being built, the sale would pay for their expenses.

21. We noted that the respondent did not oppose the order, but was concerned that he had time to try and find other suitable accommodation and was going to be contacting the council when the decision was issued, to commence his application for a council house. We note that he was keen to stay in the area as he worked there and also he did not drive. He did not have dependants.

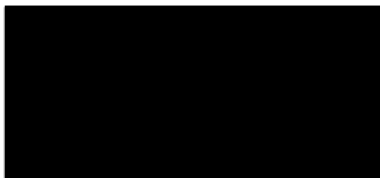
22. The tribunal was prepared to grant the order for recovery of possession, given that the respondent was not opposing the order and having regard to the reason provided by the applicant that they wanted to sell the property to recover some costs during the renting and building of their new home. We consider that it would be reasonable to grant the order for eviction.

Decision

24. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.



17th October 2023

Legal Member/Chair

Date