



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/23/0616

Re: Property at 73 Bolton Drive, Glasgow, G42 9DS (“the Property”)

Parties:

James Laird (Gold Beaters) Ltd, 18 Craig Road, Cathcart, Glasgow, G44 3DR (“the Applicant”)

Ms Frances Duddy, 73 Bolton Drive, Glasgow, G42 9DS (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

1. On 27th February 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.
2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 6th February 2018 and a rent of £525 per month
 - b. Copy Notice to Leave dated 24th November 2022;
 - c. Copy email dated 25th November 2022 to the Respondent serving the Notice to Leave;
 - d. Section 11 Notice;
 - e. Proof of service of d

3. The Application was served on the Respondent by Sheriff Officers on 6th September 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Kenneth Laird, Director and Steven Mitchell, Company Secretary. There was no attendance by the Respondent or any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Mr Laird sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that he is the sole director of the Applicant company. He said he is 63 years old and is planning to retire. His son is going to take over the main business but does not wish to take over the rental properties, of which the company has five. Notices To Leave have been served on the tenants in all five flats. The Applicant company is not able to provide any evidence that an estate agent will market the property for sale. He said that the Respondent does not let people in to the flat and they have not been able to find an estate agent to take on a sale without first viewing the property.
7. The Tribunal found Mr Laird to be credible and reliable and accepted that it was the intention of the Applicant company to advertise the property for sale as soon as it is vacant. The Tribunal were therefore satisfied that the ground had been established.
8. The Tribunal asked Mr Laird to address the Tribunal on reasonableness. He said that the original intention had been to market the property just before the end of the tax year, but they have sought to accelerate this as the Respondent is not allowing access for the gas and electrical safety checks to be carried out. The Respondent does not communicate with the Applicant’s representatives, and she has got in to arguments with contractors there to carry out safety checks. The lack of the necessary safety certificates has led to a delay with the processing of the Applicant’s landlord registration renewal application.
9. Mr Laird said that complaints have been received from neighbours, and from the local authority’s anti social behaviour team regarding the Respondent. It is alleged that she has been going to the doors of some neighbours and picking arguments with them.
10. Mr Laird said that the Respondent is a single lady, as far as he can tell in her early fifties. He has no knowledge about her appointment status. She is in

arrears of rent in the amount of £5689, which is just offer ten months' worth of payments.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 6th February 2018;
3. A Notice To Leave, dated 24th November 2022, was served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer on 6th September 2023;
5. The Applicant intends to market the property for sale as soon as the Respondent vacates;
6. The Respondent has failed to allow access for the mandatory gas and electrical safety checks to be carried out;
7. The Respondent is in rent arrears in the amount of £5689;
8. There have been complaints from neighbours about the Respondent's behaviour.

Reasons for Decision

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

Having been satisfied that Ground 1 has been met, The Tribunal also has to decide if it is reasonable to grant the eviction order. The Tribunal has to exercise its discretion in applying the facts to decide if it is reasonable. The Tribunal considered the level of the rent arrears, being well in excess of six months’ rent, in and of itself makes it reasonable to grant the order. The lack of access granted for mandatory safety checks, and the complaints from neighbours serve to strengthen the decision.

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.

Alison J Kelly

13th October 2023

Legal Member/Chair

Date