



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/23/1791

Re: Property at Flat 3, Scott's Mill, Ann Street, Gatehouse of Fleet, DG7 2HU (“the Property”)

Parties:

Mr Ian Watson, Mrs Margaret Watson, Waterside, 33 Bladnoch, Wigtown, Newton Stewart, DG8 9AB (“the Applicant”)

Mr Howard Haynes, Flat 3, Scott's Mill, Ann Street, Gatehouse of Fleet, DG7 2HU (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Introduction

This Case Management Discussion concerned an Application for Eviction in relation to a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The hearing took place by teleconference.

1. Attendance and Representation

The Applicants were both present. Jennifer Colledge, Colledge and Shields
30 Castle Street Dumfries DG1 4DU

The Respondent was present. He was supported by his Housing Support Worker, Marcus Wright from Turning Point Scotland who assisted him in participating in the hearing. His representative, Doreen Beattie, Dumfries CAB attended for him.

2. Preliminary Matters

On the day before the hearing the Tribunal heard that the Respondent had instructed representation from Dumfries Citizen's Advice Bureau. The representative sought a postponement but given the late hour of the request was advised to raise any issues regarding same at the start of the hearing.

Ms Beattie confirmed that Mr Wright, the representative's Support worker got in touch on 2nd November 2023 to say that the Respondent needed representation. She advised that the Respondent could not provide paperwork but she got the paperwork yesterday from the Tribunal. On that basis she could proceed today and she did not request further time.

The Respondent's representative submitted that there was in her submission no defence to the application and her concern was as to how the eviction would be managed. She confirmed the Respondent had mental disorder but he did not wish to disclose the diagnosis and she did not want to context reasonableness

The Applicants' representative submitted that she had lodged an affidavit and supporting documentation to establish that there is a genuine need to sell the property at issue. She confirmed she sought an order on Ground 1 only and did not seek to establish on the evidence lodged that the property required to be sold to alleviate financial hardship.

The Respondent's representative confirmed she has seen the papers but had not seen the Affidavit and supporting information subsequently lodged by the Applicants. She did not seek further time. The Tribunal allowed a significant adjournment given this for the representative to go through these documents with the Respondent and to take his up to date instructions on the basis they were conceding the application in full, both on the Ground and on reasonableness.

The Applicants' representative submitted she would oppose any adjournment and she sought to highlight the Respondent had not lodged a written response since the last CMD.

There were no other preliminary matters raised.

3. Background

This application called previously and was adjourned to a further Case Management Discussion. The Tribunal had noted then that the Respondent sought an opportunity to instruct legal representation and to lodge written representations. The Tribunal discussed that any further information relevant on the issue of reasonableness could be lodged by either party before the next hearing.

There were no other preliminary matters raised.

4. Case Management Discussion.

For the Applicants

The Applicants sought that a decision be made today. The Applicants' representative submitted that the Respondent ought to have lodged a written response and that he had not done that. She submitted that for the Applicants this an urgent matter as they are in the later stages in life. The current position for them is not sustainable after they intimated the Notice to Leave on the 8th March 2023 she said. Her submission was that reasonableness to the Applicant was relevant only.

The Applicants' representative said as they did not seek to establish financial hardship that the eviction ban would apply in the case and she has lodged information to establish that there is a genuine desire and need to sell the property. The Applicants are 75 years and 79 years of age and the stress regarding the property is significantly taking its toll. There is concern on their part that the property is not being looked after.

The Applicants' representative submitted that she also sought expenses under Rule 40 and she submitted that the Respondent had been unreasonable in his conduct. He had not lodged written representations and had caused the Applicant's additional expense.

For the Respondent

The Respondent's support worker confirmed that the Respondent has professional support now but it had been difficult due to the Respondent's mental health to engage with him. From the date of the Notice to Leave the Respondent had no support. He was referred to Turning point by his mental health nurse. The Respondent does not wish to disclose the diagnosis but the Respondent's mental health presents a huge challenge and the threat of eviction caused a paralysis in him being able to deal with it for months. He was not able to answer the door, open mail or check emails. The support worker said it took him 2 weeks on the telephone to get a visit with the Respondent.

The Respondent's representative said that she conceded it was reasonable to evict the Respondent subject to the eviction ban applying. There are significant mental health issues and a change of residence is a massive pressure on the Respondent. The Respondent objected to the Affidavit lodged by the Applicant in particular paragraph 15 on the basis it unfairly outlined the Respondent's situation. It was submitted that given the Respondent took issue with being described as uncooperative and that he was entitled to deny access whilst being in hospital to the property when he was unwell. The submission for the Applicant for expenses was opposed on the basis that the Respondent has not been unreasonable in regards any matter concerning these proceedings.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent was present and represented. The Respondent was given opportunity by adjournment to confirm his instructions during the hearing. No material matters of fact were in dispute. The Respondent's representative did not seek a postponement at the hearing and she conceded an order in her submission was appropriate and reasonable.**
- 2. The Applicants sought an Order for Eviction on the basis of ground 1, they the intended to sell the property.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 25 February 2020 with a start date of 5 March 2020. A Notice to Leave was sent to the Respondent on 8th March 2023.**
- 5. The Tribunal was satisfied on balance that the Applicants were, in terms of Schedule 3, Part 1, Ground 1 of the 2016 Act intending to sell the let property, they were entitled to sell the let property, and they intended to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.**
- 6. The Tribunal was further satisfied on the evidence lodged that the Applicants had a genuine need and wish to sell the property and had commenced steps in this regard.**
- 7. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.**
- 8. The Tribunal found that the requirements of Ground 1 of Schedule 3 to the Act had been met.**
- 9. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 10. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 11. On the information given to the Tribunal by the Applicants' Representative, the Applicants were 75 years of age and 79 years of age. They no longer wished to be landlords and had taken financial advice in**

this regard. They sought to sell the property to support their retirement income. The Respondent had significant mental ill health and lived alone. The Tribunal found an Order was reasonable on balance in terms of the Coronavirus (Scotland) Act 2020. Any eviction would be subject to a delay under the Cost of Living (Tenant Protection) (Scotland) Act 2022. The Respondent conceded the grounds for Eviction were met and that an order was reasonable.

12. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

13. The Tribunal refused the request for expenses against the Respondent in terms of Rule 40.

Reasons for Decision

This was a difficult case for the Tribunal to determine in terms of the overriding objective. Both the Applicants and the Respondent were vulnerable. The Tribunal had initially allowed the opportunity to the Respondent to obtain representation and lodge written representations at an earlier stage. It was highlighted that the issue of reasonableness was pertinent to the Tribunal. To that end the Applicant's lodged further information on reasonableness from the Applicant's point of view before the hearing. However the Respondent did not lodge any supporting information but had engaged representation. The Respondent's representative did not seek further time to lodge any further evidence, did not seek a hearing on reasonableness and instead conceded the ground was met for an order and further that an order was reasonable. Her concern was that the Respondent be given time to obtain support and assistance given his mental health to find alternative accommodation. This was mitigated by the appliance of the Cost of Living (Tenant Protection) (Scotland) Act 2022 provisions. On balance, there being no material dispute in fact and on the basis that there was no opposition to an order the Tribunal granted an order for Eviction. The Tribunal did not consider the provisions of Rule 40 applied, the Respondent's conduct had in no way given rise to any justification for an award of expenses against him. The ability to secure support and representation for tenants in housing matters can be difficult and alongside same the Respondent had significant mental ill health.

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 **07/11/2023**
Date