



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/23/2347

Re: Property at 19 Rosepark Avenue, Uddingston, Glasgow, G71 6JD (“the Property”)

Parties:

Mr Neil Joseph Duffy, 33 The Cuillins, Uddingston, Glasgow, G71 6EY (“the Applicant”)

Mr David Alexander McCaig, 19 Rosepark Avenue, Uddingston, Glasgow, G71 6JD (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application dated 14 July 2023, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 1 of Schedule 3 to the Act, namely that the landlord intends to sell the Property.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 18 October 2021 at a rent of £500 per month, and a Notice to Leave dated 9 February 2023, stating that Ground 1 was the reason for the Applicant seeking an Eviction Order and that an application to the Tribunal would not be made before 7 May 2023. The Applicant also provided a copy of an email from a firm of estate agents in Glasgow, confirming the Applicant’s instructions to sell the Property when it becomes vacant.

3. The Applicant's solicitors stated in the application that it would be reasonable to issue an Eviction Order. The Applicant requires to sell the Property due to his health and his financial position. He has suffered various health issues, including a bleed to the brain and six broken ribs, so no longer feels able to continue to let the Property. The Respondent has not paid rent since July 2022. The Property is subject to a mortgage, so despite lack of rental payments, the Applicant requires to make monthly mortgage payments.
4. On 9 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 30 October 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 14 November 2023. The Applicants were represented by Miss Nicola Brechany of TC Young, solicitors, Glasgow. The Respondent was not present or represented.
6. The Applicant's representative told the Tribunal that the arrears of rent had now increased to £7,900, placing additional financial pressure on the Applicant. The current economic climate and the fact that mortgage rates had increased substantially during a period in which he was receiving no income from the Property, combined with his ill health to make the Applicant decide that he had to sell the Property. No rent had been received since the date of the application.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
8. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.
9. The Tribunal was satisfied from the evidence provided that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal was

to decide whether it would be reasonable to issue an Eviction Order. The Tribunal noted that the Applicant's health was an important factor in his decision to sell, that the arrears are very substantial and have persisted over a very lengthy period and that the Applicant had no rental income coming in to assist with his mortgage payments.

10. Having carefully considered all the evidence before it, and in the absence of any representations to the contrary from the Respondent, the Tribunal decided that it would be reasonable to issue an Eviction Order against the Respondent.

11. The Tribunal's Decision was 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

14 November 2023
Date