



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/23/2674

Re: Property at 24 Woodlea Drive, Hamilton, ML3 7QZ (“the Property”)

Parties:

Mr Antony Murphy, 3 Chateau Grove, Hamilton, ML3 7DS (“the Applicant”)

Miss Melissa Queen, 24 Woodlea Drive, Hamilton, ML3 7QZ (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Tony Cain (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 8 August 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 (‘PRT’) between the Parties commencing on 19 February 2020 at a rent of £500 per month, and a Notice to Leave dated 5 January 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 31 March 2023. The Applicant also provided a letter from John Y Robertson Solicitors dated 8 August 2023 confirming that the Applicant had instructed the firm for a number of years in the purchase and sale of properties and that the Applicant was keen to sell his

portfolio. The sale of the Property will take place as soon as the Applicant has vacant possession.

3. On 1 September 2023 the Applicant lodged a rent statement and requested that the application be amended to include a request for eviction on Ground 12 in addition to Ground 1. Ground 12 of the Act is that the tenant has been in rent arrears for 3 or more consecutive months.
4. On 15 September 2023 the application was accepted by the Tribunal. The Tribunal issued a Direction on that date stating that the Applicant would require to address the Tribunal at the Case Management Discussion ('CMD') regarding whether Ground 12 could be added in the application.
5. On 18 September 2023 the Applicant forwarded communication to the Respondent to comply with the pre-action requirements and pointing the Respondent in the direction of relevant advice and support agencies.
6. On 3 October 2023 the Applicant provided a rent statement stating that the Respondent was in arrears of rent of £3850.
7. On 17 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 7 November 2023. This letter was served on the Respondent by Sheriff Officers together with the application personally on 18 October 2023.
8. No written representations were received from the Respondent.

The Case Management Discussion (CMD)

9. The CMD took place by conference call at 2pm on 22 November 2023.
10. The Applicant was represented by Mr John McDonald of John Y Robertson solicitors. There was no appearance by the Respondent.
11. Mr Robertson invited the Tribunal to allow the addition of Ground 12 to the application and sought an Order for Eviction under Grounds 1 and 12.
12. In support of Ground 1 Mr Robertson said that the Applicant was a retired solicitor and had been in private practice in Hamilton a number of years ago. He retired in 2006/2007. Since that time Mr Robertson said that his firm had acted for the Applicant and his wife in the purchase of several domestic properties. The majority of these properties were ex- local authority houses which the Applicant refurbished and either sold on or leased out.
13. This had all worked out fine until the pandemic and many of the Applicant's tenants had fallen into rent arrears. The Applicant and his wife have not yet

reached pensionable age and are reliant on rental income as their source of income. The Applicant had already required to make at least 2 other applications to the Tribunal under similar circumstances against other tenants which had already been granted by the Tribunal.

14. The Applicant now wanted out of the domestic rental market. Last year he had actively sold properties as soon as the tenants had left and he was not purchasing any additional properties. He fully intends to do the same regarding this Property. There is no mortgage outstanding.
15. In respect of Ground 12 Mr Robertson said that he had produced a rent statement and added that rent arrears have accrued since January 2023. As at the date of the CMD there was £4850 in rent arrears. No payments have been made since the Notice to Leave was served.
16. Mr Robertson said that he had e-mailed the Applicant for an update on matters last week and the Applicant had confirmed the position. He also said that the Respondent had said to the Applicant, the last time that there was any communication between them, that she was waiting for the Council to get back in touch with her. The Respondent had also said that she had no intention of paying any rent as she had been told by the Council that the Applicant would be unable to evict her without an Order from the Tribunal. She has made an application to the Council for housing. Mr Robertson was unaware of the Respondent's personal circumstances.
17. Mr Robertson was asked whether it was normal practice in Hamilton for rent to be paid in cash as was provided for in the PRT. He was unsure if that was normal practice in that area or indeed for the Applicant as a general rule in respect of his properties which he rented out.

Findings in Fact

18. The Tribunal made the following findings in fact:
 - (i) The parties entered into a PRT which commenced on 19 February 2020;
 - (ii) In terms of Clause 8 of the PRT the Respondent was due to pay rent to the Applicant in the sum of £500 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act, and which was served on 5 January 2023
 - (iv) The Notice to Leave intimated that proceedings for removal would not be raised before 31 March 2023.
 - (v) The Applicant presented an application to the Tribunal on 8 August 2023 seeking an Order for Eviction.
 - (vi) A Notice in terms of s 11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the relevant local authority.

- (vii) The Applicant is entitled to sell the Property and intends to do so as soon as he has vacant possession.
- (viii) Ground 1 of Schedule 3 of the 2016 Act is established as at today's date.
- (ix) It is reasonable to grant the order for eviction.

Reasons for Decision

19. 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.
20. The first question for the Tribunal was whether to allow the amendment of the application to include Rule 12. The Tribunal were not satisfied that it was appropriate to allow the amendment. This Ground was not a ground stated on the Notice to Leave and was not on one of the new grounds introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. Furthermore the rent statement provided was not on headed paper, was not certified or signed by the Applicant and was not accompanied by any rent receipts given that the rent was in terms of the agreement paid by cash.
21. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a PRT if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies.
22. 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.
23. 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.
24. The Tribunal was satisfied from the evidence provided that the Applicant intends to sell the Property and that the Respondent has been aware of his intentions since January 2023.
25. 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 Respondent had taken steps to secure alternative accommodation with the local authority and that she had paid no rental since May 2023. She has received notification of the CMD. She has not appeared at the CMD and has made no representations. She has stated to the Applicant that she has no intention of paying any rent and that she will remain in the Property until an Order for Eviction is enforced. The

Applicant is entitled to an order for possession in order to sell the Property and having considered the circumstances of the Applicant and those of the Respondent it is reasonable to make an order for Eviction. The Tribunal also took account of the Applicant's circumstances and balanced these against the competing interest of the Respondent His circumstances were such that he required to consider selling the Property to recoup some of the losses he had incurred. In all the circumstances, the Tribunal was satisfied that it was reasonable to grant the Order.

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.



Yvonne McKenna

22 November 2023

Legal Member/Chair

Date