



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/23/1636

Re: Property at 44 Chapelhill Mount, Ardrossan, KA22 7LU (“the Property”)

Parties:

Mr Tony Williamson, 41 Mariners View, Ardrossan, KA22 8BF (“the Applicant”)

Ms Nicola Moore, 44 Chapelhill Mount, Ardrossan, KA22 7LU (“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 determined without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application dated 3 January 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 1A of Schedule 3 to the Act, namely that the landlord intends to sell the Property to alleviate financial hardship.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the parties commencing on 8 April 2019 at a rent of £500 per month and a Notice to Leave dated 25 January 2023, advising the Respondent that an application to the Tribunal for an Eviction Order would not be made before 25 April 2023. The Notice to Leave referred to Ground 1 and not to Ground 1A, introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. The Applicant also provided a copy of a letter of engagement with terms of business, dated 4 August 2023, from a firm of estate agents, in respect of the sale of the Property, and a Mortgage Statement from June 2023 confirming that his interest-only mortgage over the

Property was due to be repaid in 6 months, the amount of the loan being £49,470.96.

3. On 17 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 7 November 2023. The Respondent did not make any written representations to the Tribunal.
4. On 31 October 2023, the Applicant's letting agents provided the Tribunal with a copy of an email dated 2 August 2023 from the Applicant's accountants. They confirmed that he currently lets three properties and that one of them has had to be contracted for sale with an estate agent in order to enable a mortgage to be settled. That sale would lower the income of the Applicant, whose bed and breakfast business had had to close, having been greatly affected by the COVID-19 lockdown. The Applicant's taxable income for the year ended 5 April 2022 had reduced to £4,315.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 22 November 2023. The Applicant was present and was also represented by Mr Craig Scott of Rentolease Property Management Ltd & Cunninghame Properties, Prestwick. The Respondent was not present or represented.
6. The Applicant advised the Tribunal that he was in a position where the mortgage over his own home has to be repaid and he can only do that by selling one of his three rental properties. There is a family in one of the properties and the tenant in the other suffers from long-term sickness. The present Property was leased to the Respondent as a single tenant who was working, although it appears she may now have two young children. There have also been issues of arrears of rent. The Applicant's representative did not know whether the Respondent is in work or receiving benefits, as she pays her rent directly. He was not aware of the Respondent having any health or vulnerability issues. The Applicant told the Tribunal that he is 75 years old and that he has caring responsibilities for a 93-year-old relative in England, which means that he is not able to carry out repairs to the Property himself, as he could formerly do. This results in higher repair and maintenance costs, which increase the financial pressures he is under.

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.

9. Ground 1A of Schedule 3 to the Act states that it is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship and that the Tribunal may find that Ground 1A applies if the landlord is entitled to sell the let property, is suffering financial hardship and intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Evidence tending to show that the landlord has that intention includes (for example) a letter of advice from an approved money advisor, local authority debt advice service, independent financial advisor or chartered accountant, a letter of engagement from a solicitor or estate agent or an affidavit stating that the landlord has that intention.
10. The Tribunal was satisfied that the Applicant intends to sell the Property. He has provided evidence of that intention in the form of the letter of engagement from estate agents. With regard to alleviating financial hardship, the Tribunal accepted the Applicant's evidence that he could only repay the interest-only mortgage over his home by selling one of his rental properties. The Tribunal also noted that the Respondent had not made any written representations and had not attended the Case Management Discussion or provided the Tribunal with any information relative to her personal circumstances that she would wish the Tribunal to take into account in deciding whether it was reasonable to issue an Eviction Order. Having taken into account all the facts and circumstances and all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 1A.
11. The Cost of Living (Tenant Protection) (Scotland) Act 2022 does not apply to a Decision under Ground 1A of Schedule 3 to the 2016 Act, but the Tribunal was reluctant to permit the Order to be enforced over the Christmas and New Year holiday period, when support services of the local authority and other agencies may be limited and there would be a greater risk of the Respondent and her family being in temporary accommodation over that period. Accordingly, the Tribunal decided that its Order should not be enforceable before 1 February 2024.

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.

G. Clark

Legal Member/Chair

22 November 2023
Date