



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/23/2712

Re: Property at 9 Douglas Street, Hamilton, ML3 0BP (“the Property”)

Parties:

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

Mr Patrick McCann, Miss Andrea Girvan, 9 Douglas Street, Hamilton, ML3 0BP (“the Respondent”)

Tribunal Members:

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondents.

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant was not present but represented by John MacDonald, solicitor, 28 Gateside, Hamilton, ML3 7JG

The Respondents were both present and unrepresented.

3. Preliminary Matters

There were no preliminary matters raised.

4. Case Management Discussion.

For the Applicant

The Applicant's representative submitted he sought grant of the eviction order on the basis the Applicant intends to sell the property within 3 months. The Applicant is looking to retire from domestic rentals, he is in his 60's and has been in the rental market for a number of years. The Applicant's representative has been instructed in the last 18 months to sell properties now. The Applicant and his wife wish to retire. Their only income is rental income and they are looking to sell properties now to retire.

The Applicant's representative said he was not clear on the portfolio size but it was probably between 10 and 20 properties.

For the Respondents

The Respondent's explained they have a housing application to lodge for housing with the local authority. They also explained they have discussed with the Applicant directly that they may wish to buy the property. They have resided in the property for 10 years. They have 2 children, aged 12 years and 9 years with no health needs. The Respondents have no health needs, are both employed and are aged 39 and 42 years.

Findings in Fact.

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The evidence was not in dispute. Parties were in agreement on the material facts.**
- 2. The Applicant sought an Order for Eviction on the ground that the Applicant in terms of Ground 1, intends to sell the property within 3 months of the Respondents seeking to occupy same. This was not in dispute. .**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application alongside further legal documents. This was not disputed.**

4. There was a PRT in place between parties dated 1st January 2020.
5. A Notice to Leave was sent to the Respondent on 5th January 2023.
6. The Tribunal was satisfied on balance that the Applicant was in terms of Schedule 3, Part 1 Ground 1 of the 2016 Act intending to sell the property.
7. The Tribunal found that the requirements of Ground 1 of Part 1, Schedule 3 to the Act had been met.
8. The Tribunal was also 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. There was no challenge to same.
9. The Tribunal noted the Local Authority under the 2016 had been notified.
10. The Tribunal spent time looking at reasonableness. Whilst the Ground was not in dispute the Applicant had instructed his representative over a period of time to retire from the rental market and he has been seeking properties for this purpose. There is no other income for the Applicant other than rental income for properties. He is seeking to retire. The Respondents have 2 children, are in full time employment and have no health issues. They have resided in the property for 10 years but the PRT in place is from 2020. They are seeking local authority housing or to purchase the property. In all the circumstances the Tribunal considered it was reasonable on balance looking at the competing positions that the Applicant is able to sell the property. The Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020.
11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.
12. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.

Reasons for Decision

The Tribunal heard credible evidence of the Applicant's representative that the Applicant is seeking to retire and is putting in place decisions to sell his domestic rental properties. He has no other income other than these properties and has started the process of the last 18 months, selling other properties. He and his wife is in his 60's. The Respondents did not dispute the position but explained there were seeking to either purchase the property or seek alternative housing with the local authority. The Tribunal weighed up the circumstances and determined on balance that an order for Eviction was reasonable but would be subject to Cost of Living (Protection for Tenants)(Scotland) Act 2022.

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

Date 16/11/2023