



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/23/2464

Re: Property at 107 McGregor Road, Cumbernauld, Glasgow, G67 1JG (“the Property”)

Parties:

Mr James O’Brien, 55 Stirling Avenue, Bearsden, Glasgow, G61 1PF (“the Applicant”)

Mr Jamie Brewer and Mrs Pamela Brewer, both 107 McGregor Road, Cumbernauld, Glasgow, G67 1JG (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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 Respondents.

Background

1. By application dated 25 July 2023, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2026. 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 24 October 2019, a Notice to Leave dated 30 March 2023 advising the Respondents that an application to the Tribunal under Ground 1 would not be made before 26 June 2023, and a signed Terms of Business agreement with KW Scotland estate agents, Glasgow.

3. On 31 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 21 November 2023. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 12 December 2023. The Applicant and both Respondents were all present.
5. The Tribunal told the Parties that it was satisfied that the requirements for a Ground 1 application had been met and that the issue for the Tribunal to determine was whether, in all the circumstances, it would be reasonable to issue an Eviction Order.
6. The Applicant told the Tribunal that he needs to sell the Property as he has lost a lot of his business. He is self-employed in the newspaper distribution industry and recent years have seen the supply of printed newspapers tumbling. He confirmed that he does not own any other properties. He has had to put his own house on the market and needs to sell the present Property as well. There are mortgages over both houses and his home has been on the market since August. The mortgage payments on his present home have increased and his income level has reduced. He had no objection to the Respondents staying on until the end of March 2024, but he needed certainty that he could recover possession then, so that he could plan his own affairs. His intention is to buy a property from the proceeds of the sale of the two properties. If that is not possible he will need to try to rent a property. He pointed out that the Notice to Leave had been served nearly 9 months ago, so it would be a full year from then before he could get the Property back.
7. The Respondents told the Tribunal that they live in the Property with their 5 children, aged between 2 and 15 years. Three of the children attend school and the other two are at Nursery. Two of them have been diagnosed with autism and they require routine in their lives. The eldest child is only attending school for English and Maths at present. The uncertainty regarding the possibility of eviction was having a detrimental impact on the health of the children. The Respondents understood the Applicant's reason for wishing to sell the Property and were not refusing to move, but they are fearful of the impact on their children if the local authority put them into temporary accommodation. They have a really high number of points relative to an application to be rehoused by the local authority and have a social worker who has written to North Lanarkshire Council to support their application, in the hope that the intermediate step of temporary housing can be avoided, but the type of property they need is very hard to come by. Mr Brewer told the Tribunal that he is a full-time carer for one of their children. Mrs Brewer said that she is employed as a driver's escort, transporting children with additional support needs to and from school. Mr Brewer highlighted the detrimental impact the uncertainty about their future housing is having on their eldest son.

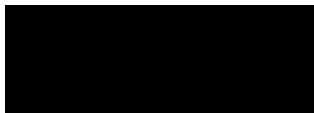
Reasons for Decision

8. 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.
9. 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.
10. The Tribunal is satisfied from the evidence provided that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal is to decide whether it would be reasonable to issue an Eviction Order.
11. The Tribunal recognises that this is a very difficult case, with significant consequences for the Applicant if the application is not granted and for the Respondents if it is. The Applicant has established his need to sell the Property, but this has to be weighed up against the impact on the Respondents and, in particular, their children, if an Eviction Order is issued. Each Party is very understanding of the other's position. The Tribunal's view is that, if it does not issue an Eviction Order, the Respondents will be in a position where the Applicant may apply again, if his financial position continues to deteriorate, and that uncertainty as to their housing will remain. The Respondents have the help of a social worker and are well placed to be rehoused, although only when a suitable property can be allocated to them by the local authority. The Tribunal's view is that the Applicant has no other options open to him if he cannot recover possession and sell the Property. The Respondents do, however, have a good prospect of being rehoused, and their family circumstances and the support of their social worker will, it is hoped, persuade the local authority to find permanent housing which does not involve the intermediate step of temporary accommodation. The Cost of Living (Tenant Protection) (Scotland) Act 2022 applies in this case, the practical effect being that an Eviction Order cannot be enforced before 31 March 2024, when the provisions of that Act expire. This will give the local authority three months to endeavour to allocate a house to the Respondents.
12. The Tribunal has great sympathy for the Respondents' family situation but, in deciding the question of reasonableness, it has to have regard to the situation of both Parties and, having carefully considered all the evidence before it, the

Tribunal decided on balance that the need for the Applicant to be able to sell the Property outweighed the potential consequences for the Respondents. Accordingly, the Tribunal decided to grant the application and to issue an Eviction 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.



Legal Member/Chair

12 December 2023
Date