



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/24/1731

Re: Property at 62 Gleburn Road, North Berwick, East Lothian, EH39 4DH (“the Property”)

Parties:

Mr Sean Dubber, 37 Forth View, West Barns, Dunbar, East Lothian, EH42 1TZ (“the Applicant”)

Ms Natalia Mach, 62 Gleburn Road, North Berwick, East Lothian, EH39 4DH (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted in favour of the Applicant.

Background

1. This is an application for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicant to the Respondent and commenced on 15 December 2020.
2. The application was lodged with the Tribunal on 15th April 2024.
3. The application relies upon a Notice to Leave dated 05 January 2024, issued in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”), served upon the Respondent by email, all in accordance with the provisions of the PRT. The Notice was made in terms of Ground 1 of Schedule

3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 01 April 2024.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Lothian Council on 15 April 2024 was included in the application papers.
5. The application papers included an estate agency mandate between the Applicant and Gilson Gray Property Services Ltd which confirmed that Gilson Gray had been instructed by The Applicant to market and sell the Property. The Applicant had also lodged a written statement which explained why he wished to sell the Property.

The Hearing

6. The matter first called for a case management discussion (“CMD”) of the Tribunal on 20 September 2024. At that hearing the Respondent had requested further time to allow her to take advice in relation to the application and to seek representation for the Tribunal hearing. The Tribunal adjourned the CMD and a further hearing was arranged for 05 December 2024. The Tribunal also issued Directions to parties which required parties to lodge written submissions as to why they considered it was reasonable (or not reasonable) to grant an order of eviction.
7. On 05 December 2024 the Tribunal convened a further hearing in relation to e Application. The Applicant joined the conference call. The Applicant was represented on the conference call by Mr Martin Urquhart from the Applicant’s letting agents, Messrs. D. J. Alexander. The Respondent also joined the conference call. The Hearing was held by conference call.
8. At the CMD, the Respondent advised the Tribunal that she no longer wished to oppose the granting of an eviction order. The Respondent indicated that she had taken advice. The Respondent requested that the Tribunal grant a reasonable period to allow her to source alternative accommodation and requested that any eviction order was not enforceable prior to the end of January 2025.
9. After a short adjournment, the Applicant’s representative confirmed that the Applicant would consent to a suspension of enforcement of an eviction order to 31 January 2025. The Applicant considers that it is reasonable for the Tribunal to grant an eviction order as he wishes to sell the Property to allow him to realise the capital value of the Property, which would then allow the Applicant to buy a home for him and his family.

Findings in Fact and Law

10. The Applicant is the owner of the Property,
11. The Applicant let the Property to the Respondent under a Private Residential Tenancy which commenced on 15 December 2020.
12. Notice to Leave was emailed to the Respondent on 05 January 2024. The notice to leave relied upon Ground 1 of Schedule 3 part 1 of the 2016 Act
13. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Lothian Council on the Applicant's behalf on 15 April 2024.
14. The Applicant has instructed Gilson Gray, solicitors, to market and sell the Property.
15. The Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and it is reasonable that an order for eviction is granted.

Reasons for Decision

16. The application is in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
17. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1.)...the landlord intends to sell the let Property.
 - (2.) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord –
 - a. is entitled to sell the let Property,
 - b. 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
 - c. The tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
 - (2) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) –
 - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let Property,
 - (b) a recently prepared document that anyone responsible for marketing the let Property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the Property already on the market.
20. The Applicant is the owner of the Property and is entitled to sell the Property. The Applicant has engaged agents to sell the Property. The Applicant wishes

to sell the Property as he wishes to realise the value of the Property to allow him and his family to utilise the funds realised for other purposes.

21. The Tribunal considered whether it was reasonable to issue an eviction order.

The Tribunal accept that the Applicant wishes to sell the for the reasons given in the application. The Applicant, his wife and daughter currently reside with the Applicant's parents in a two bedroom property. The Applicant wishes to sell the Property and to purchase a suitable him for his and his family.

The Respondent does not seek to oppose the granting of the eviction order.

In all the circumstances the Tribunal are satisfied that it is reasonable to grant an order for eviction.

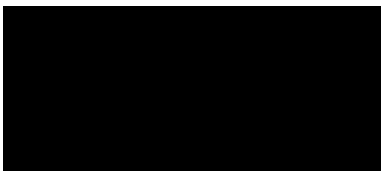
22. The Tribunal consider that in the circumstances of the case it would be appropriate to allow the Respondent time to remove from the Property to allow her the opportunity to seek alternative accommodation. Taking account of the views and wishes of the parties on this point, the Tribunal have determined that the order for possession should not be executed prior to 12 noon on 31 January 2025.

Decision

23. In all circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act.

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.



Andrew Cowan

Legal Member/Chair

Date 05 December 2024

