



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/24/4256

Re: Property at 50 Ladysmill, Falkirk, FK2 9AU (“the Property”)

Parties:

DM & FG Properties Ltd, Dunroamin, Drove Road, Denny, FK6 5FR (“the Applicant”)

Mrs Amy Banks, 50 Ladysmill, Falkirk, FK2 9AU (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

Background

1. On 12th September 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 15th April 2019 and a rent of £375 per month;
 - ii. Copy Notice to Leave dated 11th June 2024;
 - iii. Copy email dated 11th June 2024 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

- v. Letter from Clyde Property dated 18th September 2024 confirming instructions to market the property.
3. The Application was served on the Respondent by Sheriff Officers on 25th February 2025.
4. On 10th March 2025 the Respondent sent a Written Submission with documents setting out her position.

Case Management Discussion

5. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Ms O’Rourke of Belvoir Lettings, Falkirk. The Respondent represented herself.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Ms O’Rourke sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She confirmed that the Applicant 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. She said that the Applicant has eleven properties in its portfolio. There are buy to let mortgages on the properties and the interest rates being charge have increased substantially recently. The Applicant had sought to increase the rent to a level that would cover the mortgage but the Respondent did not agree to it. The Applicant then felt it had no choice but to seek eviction order to sell the property. The proposed rent increase would have covered the mortgage, but the current amount, £475 per month, does not. The Applicant has had to sell three properties from its portfolio because of the mortgage rate increases.
8. The Respondent said that she was opposed to the order being granted. She was trying to seek alternative accommodation but had not been successful, as shown in her Written Submission. She was wary of being placed in homeless accommodation. She said that she had not been willing or able to pay the proposed increased rent and the Applicant served a Notice to Leave immediately and before she had a chance to apply for a rent determination.
9. The Respondent said that the property is a one bedroomed flat and she lives there with her husband. Neither of them drive and the property is close to public transport links, enabling them both to get to work. She confirmed that the property has not been adapted in relation to any disability, and that neither she nor her husband have any disabilities. She said that the local authority are aware of the calling of the case today, and she has to phone them afterwards and confirm the outcome.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property commencing 15th April 2019 and a rent of £375 per month
- b. A Notice To Leave, dated 11th June 2024, was served timeously and correctly;
- c. A section 11 notice was served on the local authority;
- d. Letter from Clyde Property dated 18th September 2024 confirming instructions to market the property.
- e. The Application was served on the Respondent by Sheriff Officer on 25th February 2025;
- f. The Applicant has a buy to let mortgage secured over the property;
- g. The mortgage interest rate has increased substantially recently and the rent payment no longer covers the mortgage payment;
- h. 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;
- i. The Respondent lives in the property with her husband;
- j. The property is a one bedroomed flat;
- k. Neither the Respondent nor her husband suffer from any disabilities nor has the property been adapted in relation to any disabilities.

Reasons for Decision

10. Ground 1 of Schedule 3 of the Act states as follows:

1(1)It is an eviction ground that 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.

(3)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.

11. There were no issues of fact in dispute and the Tribunal confirmed that it did not think that a Hearing was necessary and that the matter could be decided at the CMD.
12. The Tribunal accepted the facts put forward by each side, and there was no challenge by either party to those facts.
13. The Tribunal was satisfied that the Applicant had established the ground in that it is entitled to sell the property and Ms O'Rourke confirmed that the Applicant 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.
14. The Tribunal then had to decide if it was reasonable to grant the order. The Tribunal considered the fact that the Applicant is losing money monthly in that the mortgage payment is more than the monthly rent to be significant. The Respondent needs to be close to transport links to ensure that she and her husband are able to travel to work, however they do not have any children living in the property and they do not have any disabilities. The Tribunal considered that the balance in relation to reasonableness tipped in favour of the Applicant and that it is reasonable to grant the order.
15. The Tribunal decided to suspend extract of the Order for eviction until 11th July 2025. The reason is to give certainty to both parties and enable the Respondent to be in touch with the local authority with a view to being re-housed more quickly.

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.

Alison Kelly

14th April 2025

Legal Member/Chair

Date