



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/22/2236

Re: 4 Abbotsford Avenue, Rutherglen, Glasgow, G73 3NX
 (“the Property”)

Parties:

Mr Steven Somerville and Mrs Vivienne Somerville, 768 Thornapple Drive, Naperville, Illinois, 60540-6314, United States (“the Applicants”)

Mr Steven Corbett, 4 Abbotsford Avenue, Rutherglen, G73 3NX (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/2236 took place at 10am on Wednesday 18 January 2023 by teleconference call (“**the Second CMD**”). The Applicants were not present at the CMD but were represented by Mrs Lorna Turner (“**Applicants’ Representative**”) of Leonards Solicitors Limited. The Respondent was present at the CMD. The clerk to the Tribunal was Gerry Smith. This case was conjoined with case reference FTS/HPC/CV/22/2237 and heard at the same time.

BACKGROUND

1. The Second CMD was the second case management discussion to be held in relation to this case, the first case management discussion having been held on Friday 14 October 2022 (“**First CMD**”). A copy of the notes of the First CMD are set out in the Appendix to this decision and were considered by the Tribunal Members (along with the paperwork provided in the intervening period and submissions made during the Second CMD) in reaching their decision.

2. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.
3. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property on the basis that the Applicants intended to sell the Property.
4. Following the First CMD, directions were issued in the following terms:

“The Tribunal, on its own initiative and for the purpose of making inquiries, gives the following Direction to the parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended):

1. *By 9am on Wednesday 19 October 2022, the Applicants (or a representative on their behalf) and the Respondent are each respectively required to submit to the Tribunal (with a copy sent to the other party) details of any days in December 2022 and January 2023 on which they would not be available for a further case management discussion.*
2. *By 9am on Monday 21 November 2022, the Respondent (or a representative on his behalf) is required to submit to the Tribunal (with a copy sent to the Applicants) written submissions setting out why it would not be reasonable to grant an eviction order, together with all (if any) evidence (including but not limited to e-mails, WhatsApp messages, etc) on which the Respondent may seek to rely in this respect.*
3. *By 9am on Monday 5 December 2022, the Applicants (or a representative on their behalf) are required to submit to the Tribunal (with a copy sent to the Respondent):*
 - a. *a copy of the written contract between the Applicants and Slater Hogg & Howison (with any financially sensitive information redacted if the Applicants so wish);*
 - b. *written confirmation from Slater Hogg & Howison of the outstanding steps required in order to put the Property on the market; and*
 - c. *written submissions setting out why it would be reasonable to grant an eviction order, together with all (if any) evidence on which the Applicants may seek to rely in this respect.*

Reason for Direction

To obtain further information and documentation in order to provide evidence to support and/or to clarify details in the application paperwork and to assist the Tribunal in the determination of the case.”

5. The Respondent had been invited to provide, but had not provided, any written submissions in advance of the First CMD or the Second CMD and, importantly, the Respondent also failed to comply with direction 2 (as set out above).

6. The Applicants' Representatives had provided an inventory of productions (with accompanying productions) ("**Applicants' Productions**") and written submissions from Mr Somerville, one of the Applicants, on 2 December 2022 and had complied with direction 3 (as set out above).
7. The Applicants' Representative and the Respondent respectively confirmed that they held (or had received) copies of the documents referred to above.

Preliminary issues

Further postponement

8. The Respondent sought a further postponement of the case.
9. The Respondent explained that he had sought legal advice at the end of October 2022 following the First CMD. He explained that he had made an appointment with a lawyer for the beginning of December 2022 (for a date falling after 5 December 2022, when he knew that the Applicants' submissions were due in terms of direction 3) but that the lawyer he had instructed was off and so the meeting did not take place. A meeting was then arranged for early January 2023 with a lawyer but the lawyer was off sick on that date and so, again, the meeting did not take place.
10. The Applicants' Representative opposed the application for a further postponement of the case and noted that the Respondent had had 3 months to obtain representation.
11. The Tribunal Members adjourned to discuss the matter in private.
12. On resuming the Second CMD, the Legal Member (as chair) confirmed that the application for a further postponement of the case was refused and that the case would continue to be heard as scheduled.
13. In reaching this decision, the Tribunal Members:
 - a. noted that:
 - i. the Respondent confirmed that he had first sought legal advice from Citizens Advice Scotland in June 2022, at which time he was told not to leave the Property without an eviction order having been granted (that timing being supported by WhatsApp messages from the Respondent provided as part of the Applicants' Productions), and that he had also been in contact with South Lanarkshire Council at around the same time; and
 - ii. he had confirmed at the First CMD that he had sought legal advice (see paragraph 19 of the notes of the First CMD).

- b. noted the following part of the “Outcome” from the notes of the First CMD and which was also made clear to the Respondent orally during the First CMD:

“Notwithstanding that the Respondent had received the notice to leave in April 2022 and the notification of the CMD from the Tribunal on 31 August 2022, the Tribunal decided that it was in the interests of justice to allow the Respondent’s application to postpone the consideration of this case. The Tribunal noted that this was a one-time postponement and that, if the Respondent wished to engage legal representation, he needed to have that in place before, and available to represent him at, the next scheduled case management discussion.”

- c. noted that the Tribunal had not been contacted in advance of the Second CMD by any legal representative stating that they had been appointed to act on behalf of the Respondent, it being usual and good practice for any appointed legal representative to do so; in addition, if a legal representative had been appointed, the Tribunal Members would have expected the legal representative to have contacted the Tribunal if a request for a further postponement was to be made.
- d. noted that the Respondent had not contacted the Tribunal in advance of the Second CMD to request a further postponement.
- e. noted that a period of over 9 months had elapsed since the notice to leave had been issued.
- f. on balance, did not consider that it was in the interests of justice to grant a further postponement of the case.

Proceedings

- 14. The Respondent confirmed that he accepted that the Applicants intended to sell the Property and that he could understand their position.
- 15. The Respondent accepted that he had not paid rent since before 28 November 2021 and that there were arrears of rent of £15,400, which included the amount payable as at 28 December 2022 for January 2023.
- 16. With regard to whether or not it would be reasonable for an eviction order to be granted, the Applicants’ Representative stated (in summary) that:
 - a. it was reasonable for various reasons and it was a balancing act for the Tribunal;
 - b. the Applicants had not received any payment of rent since early November 2021 and there was a significant amount outstanding;

- c. the written submissions made by Mr Somerville were detailed and the Applicants relied upon them;
 - d. the Applicants' need to recover the Property outweighed the Respondent's position in all the circumstances;
 - e. the Respondent's children did not reside with him full-time based on information provided by a neighbour;
 - f. the Respondent had had ample time since April 2022 to make alternative accommodation arrangements and no evidence had been provided by the Respondent of any attempt to find alternative accommodation;
 - g. the Property needed a new roof, which has also prompted the desire to sell; and
 - h. the Applicants had provided the Respondent with a number of chances.
17. With regard to whether or not it would be reasonable for an eviction order to be granted, the Respondent stated (in summary):
- a. the information provided by the Applicant's Representative was incorrect - his children had been living with him full time since June 2022 (which had allowed them to stay in the same school) and he wanted a stable home for them – they go to their mother in Fife every 2nd weekend but her property is not big enough for them full time; and
 - b. he had been a tenant for a number of years.
18. The Respondent confirmed that, if an eviction order was granted, he would need to seek support from the local authority for alternative accommodation and that he had last spoken to the local authority in the first week of December 2022, with an agreement to speak to them again after the Second CMD. He confirmed that he was on the waiting list for local authority accommodation with 3 bedrooms and that he would call them urgently if an eviction order was granted.
19. The Respondent noted that he had been viewing private properties for rent but, in light of his poor credit rating, he would likely need to pay 6 months of rent upfront and provide a guarantor, which he could not do.

Findings in fact

20. The Tribunal Members were satisfied, on the balance of probabilities, that the Applicants had engaged Slater Hogg & Howison to market the Property on their behalf and that the Applicants intended to sell the Property.
21. The Tribunal Members were satisfied, on the balance of probabilities, that the amount of £15,400 was due by way of rent in respect of the rent due as at the 28th

of each month for each of the 14 months from 28 November 2021 to 28 December 2022.

22. The Tribunal Members were satisfied, on the balance of probabilities, that the Respondent's children resided with him, at least during school term time.

Reasons for decision

23. The Tribunal Members were satisfied, on the balance of probabilities, that the Applicants genuinely intended to sell the Property and that they were aware of the consequences of falsely claiming that they intended to do so.

24. The Respondent accepted that the Applicants intended to sell the Property.

25. In relation to whether or not it was reasonable to grant an eviction order, the Tribunal Members:

- a. accepted that the Applicants had an outstanding mortgage and the Tribunal Members were willing to accept that the monthly payments were of approximately £890 per month after interest rate rises (as set out in the statement provided as part of the Applicants' Productions);
- b. noted that the Respondent had not paid any rent since early November 2021 and the amount of unpaid rent was £15,400, being 14 months at £1,100 per month;
- c. were satisfied, on the balance of probabilities (taking into account both the written submissions from Mr Somerville and the content of various WhatsApp messages with the Respondent included within the Applicants' Productions), that this (non-payment of rent when due) was causing serious financial difficulties for the Applicants – the Tribunal Members accepted that the Applicants had required to buy a property in the United States of America in 2021 (having moved there in 2015) after their own landlord decided to sell and the Applicants could not afford to continue to pay a mortgage on their Scottish property as well, nor carry out substantial repairs, and also accepted that, even when the rent was being paid, it was probable that the Applicants were losing money (or at least not making a profit of any significant amount) as a result of renting out the Property after other costs were taken into account, such as (but not limited to) landlord fees, insurances, and gas/electric/appliance maintenance contracts and certificates, which costs the Applicants would have had to continue paying (along with the mortgage) even if the rent was not being paid;
- d. took into account that the Respondent had stated that he had been in contact with the local authority and had indicated to the Applicants that the local authority would provide assistance were an eviction order to be granted; and

- e. were aware that it was often the practice that a local authority would not provide alternative accommodation under its homelessness duties unless and until an eviction order had been granted.

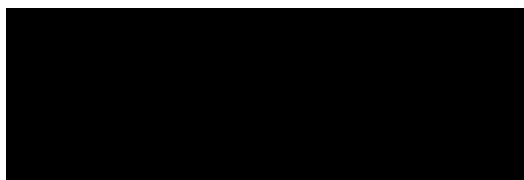
Decision

26. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order.

27. The decision was intimated orally to the parties at the Second CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.



18 January 2023

Chair

Date

APPENDIX – NOTES OF FIRST CASE MANAGEMENT DISCUSSION

Notes of case management discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/22/2236

Re: 4 Abbotsford Avenue, Rutherglen, Glasgow, G73 3NX
 (“the Property”)

Parties:

Mr Steven Somerville and Mrs Vivienne Somerville, 768 Thornapple Drive, Naperville, Illinois, 60540-6314, United States
 (“the Applicants”)

Mr Steven Corbett, 4 Abbotsford Avenue, Rutherglen, G73 3NX
 (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/2236 took place at 2pm on Friday 14 October 2022 by teleconference call (“**the CMD**”). The Applicants were not present at the CMD but were represented by Mrs Lorna Turner (“**Applicants’ Representative**”) of Leonards Solicitors Limited. The Respondent was present at the CMD. The clerk to the Tribunal was Michael Cowie. This case was conjoined with case reference FTS/HPC/CV/22/2237 and heard at the same time.

BACKGROUND

1. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.
2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.

3. The application was dated 30 June 2022 (but sent under cover of a letter dated 5 July 2022 and received by the Tribunal on 6 July 2022) and was accompanied by copies of the following:
 - a. Private residential tenancy agreement between the Applicants and the Respondent dated 30 October 2018 (“**Tenancy Agreement**”);
 - b. Letter from Slater Hogg & Howison dated 23 March 2022 confirming that it had been instructed to market the Property;
 - c. Notice to leave addressed to the Respondent at the Property issued by the Applicants’ Representatives dated 1 April 2022 (“**Notice to Leave**”) stating that:
 - i. the eviction ground being used was “Your Landlord intends to sell the Let Property” with attached copy of the letter from Slater Hogg & Howison dated 23 March 2022; and
 - ii. an application would not be submitted to the Tribunal before 29 June 2022;
 - d. Post Office Ltd certificate of posting and tracking report stating that the item was delivered on 2 April 2022 at 12:10; and
 - e. “Landlord Statement” covering the period from 1 September 2018 to 28 June 2022, which indicated that no rent had been paid since 1 November 2021 but failed to state any amount of arrears.
4. After a request from the Tribunal administration team on 8 July 2022 for a copy of the relevant notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, the Applicants’ Representatives provided a copy of the notice which it sent to the local authority on 12 July 2022.
5. A notice of acceptance of the application was issued dated 8 August 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 6 and 12 July 2022.
6. The Tribunal had received a copy of the certificate of intimation issued by Andrew McLean (sheriff officer) of Walker Love which confirmed that the letters (in respect of the cases with references FTS/HPC/EV/22/2236 and FTS/HPC/CV/22/2037) with enclosures from the Tribunal had been served on the Respondent on 31 August 2022 by depositing the letter within the letterbox of the Property. This letter notified the Respondent of the date and time of the CMD and requested written representations by 20 September 2022 among other things.
7. The Respondent had been invited to provide written representations by 20 September 2022 but had not done so.

8. In relation to the case with reference FTS/HPC/CV/22/2237, the Applicants' Representatives had applied (in terms of rule 14A of the HPC Rules) by e-mail on 9 September 2022 to amend the sum claimed from £8,800 to £11,000.
9. The Applicant's Representative and the Respondent respectively confirmed that they held (or had received) copies of the documents referred to in the paragraphs above, except that the sheriff officers' certificate of intimation had only been provided to the Tribunal Members.
10. The Tribunal noted that the Applicants were the registered landlords of the Property.
11. The Tribunal also noted that the Applicants were the registered proprietors of the Property (title number LAN6733).
12. The possession/eviction ground stated in the application form was as follows:

"The landlord intends to sell the let property. (Ground 1)."

Summary of discussion

13. The Applicant's Representative confirmed that she had spoken to Slater Hogg & Howison at 1.30pm on the date of the CMD, at which time they confirmed to her that they had full instructions to go ahead and sell the Property, the contract with the Applicants had been signed and the Applicants' identification documentation had been checked. She confirmed that the only thing that was outstanding was that they did not yet have the home report or the photos because the tenant was still in occupation. She confirmed that no attempt to take access to the Property had been taken to deal with this, essentially out of courtesy to the Respondent.
14. The Applicant's Representative confirmed that the Applicants used to live in the Property but that they had moved to America in 2015 for work originally for a period of 3 years, which was extended for a further 3 years and is now on a year-to-year basis. She explained that the Applicants had been renting a property in America but last year their landlord told them that he wanted to sell and so the Applicants have bought property in America and want to sell the Property now.
15. The Applicant's Representative explained that it was an issue for the Applicants that the rent had not been paid and they could not afford to keep the Property. She confirmed that there was an outstanding mortgage in respect of the Property and that the Applicants did not have any other properties in the UK. She confirmed that they had only rented out the Property because they didn't know if they would be remaining in America but had now bought property there.
16. The Applicant's Representative confirmed that she had made the Applicants aware of the wrongful termination provisions in the legislation but that they did in fact intend to sell.

17. The Respondent confirmed that he opposed the application for an eviction order but that he did not have any reason to believe that the Applicants did not intend to sell.
18. The Respondent indicated that he had a verbal agreement with Mr Somerville of the Applicants to upgrade the Property. He stated that he had spent around £10,000 on it in 2021 and had an expectation of being allowed to remain in the Property on a long-term basis, potentially until the Applicants' mortgage expired. He indicated that he may have WhatsApp messages relating to this. He contended that his upgrading work had added value to the Property which was 'immaculate'.
19. The Respondent requested a postponement in order to allow him to obtain legal representation. He confirmed that he had received the notice to leave in April 2022 and that the local authority had contacted him around the end of July 2022 (which appeared to the Tribunal Members to have been prompted by the section 11(3) notice). He noted that he had contacted Citizens Advice in around mid-September but they were unable to help and so he contacted another law firm on the Monday immediately before the CMD, who called him back on the Tuesday, and suggested that he request a postponement in order to allow them to represent him.
20. The Respondent explained that he had lost his business in late 2021 and, in 2022, had been involved in a car accident and lost a parent. In light of all of this, he acknowledged that he was suffering with his mental health and had "buried his head in the sand". He also explained that his children (aged 10 and 13) were now living with him full-time.
21. The Applicant's Representative opposed the application for a postponement on the basis that the Respondent had received the notice to leave in April 2022 and had had an opportunity to seek advice at an earlier stage.

OUTCOME

Notwithstanding that the Respondent had received the notice to leave in April 2022 and the notification of the CMD from the Tribunal on 31 August 2022, the Tribunal decided that it was in the interests of justice to allow the Respondent's application to postpone the consideration of this case. The Tribunal noted that this was a one-time postponement and that, if the Respondent wished to engage legal representation, he needed to have that in place before, and available to represent him at, the next scheduled case management discussion.

Accordingly, the Tribunal referred the case to a further case management discussion.

The Tribunal issued directions to confirm the further submissions and information required from each of the parties, including with regard to any dates of non-availability in December 2022 and January 2023.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



Chair

14 October 2022

Date