



Decision 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/22/1936

Re: Property at Flat 1/1 113 Bruce Road, Paisley, PA3 4SQ (“the Property”)

Parties:

Mr Hendrick Lambrecht, Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant”)

Ms Kim White, Flat 1/1 113 Bruce Road, Paisley, PA3 4SQ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This was a hearing to consider the application by the Applicant for an order of eviction against the Respondent. The Application was dated 20th June 2020 and was accompanied by the following documents:-
 - a. Tenancy agreement dated 16th December 2019
 - b. A notice to leave in a non-prescribed format dated 15th December 2021
 - c. A s33 notice and notice to quit also both dated 15th December 2021 asking the tenant to leave by 19th June 2022.
 - d. S11 notice and proof of e-mail service
 - e. Evidence to support that a firm of solicitors’ had been instructed to sell the property and others in the applicant’s portfolio.
 - f. Copy rent statement to April 2022 showing rent due of £5700.
2. The Tribunal issued a direction asking for clarification of the style of notice to leave used as it did not appear to be in the prescribed form required by

regulations. The Applicant responded by providing a further Notice to Leave in the prescribed form and confirmed this had been hand delivered and was signed by the tenant. The Notice to leave is dated 15th December 2021 and specifies 19th June as the date before which proceedings will not be raised.

1. A CMD took place on 2nd December 2022 by teleconference and only Ms Janette McLelland the Applicant's representative was in attendance for the Applicant. The Respondent did not dial in. The application and papers had been served on the Respondent by Sheriff Officers on 26th October 2022. Although the Respondent did not dial in to the CMD she sent written representations in the form of a letter dated 22nd November 2022 setting out her personal circumstances and advising why she has not left the property which included having a very young baby and experiencing health issues following the pregnancy. The Tribunal advised that the matter would be continued to a hearing in light of the Respondent's representations and to consider the matter of reasonableness. The Respondent was recommended to seek independent legal advice and was invited to lodge any written response to the Tribunal and invited to attend and give evidence at the hearing.
2. Prior to the hearing Ms McLelland lodged a further rent statement showing the revised rent due, the current arrears and a credit note correcting the rental due and showing some rent had been written off. She also provided a list of properties that the Applicant had sold and was seeking to sell.

The Hearing

3. The hearing commenced at 10.05 on 14th April 2023. Ms McLelland attended once again for the Applicant. The Respondent did not attend and has not lodged any further representations.
4. Ms McLelland confirmed that the Applicant is seeking an eviction order against the Respondent, who has been the tenant in the Property since December 2019, because they require to sell the Property which is one of several that they let out as part of a buy to let family business from which the applicant wishes to retire. She confirmed that they have sold 16 properties and the rest are in the process of either waiting for the tenants to leave, waiting for notice to be sent or waiting for a tribunal hearing.
5. Ms McLelland advised that she herself needs to retire, that she is finding dealing with this property in particular stressful and the Applicant is also getting older and needs to retire. In response to questions she confirmed that the Respondent has substantial rent arrears, that the Applicant is not always bothered about trying to recover rent arrears, that many of their tenants have arrears and they have tried to be good social landlords and help their tenants. She confirmed the current rent due by the Respondent was £7,390 and that she had only received 4 payments of £100 since last November. She confirmed that the tenant is receiving benefits but has refused to let them be paid directly to the landlord. She does not believe there is any delay or issue with the payment of the benefit monies.
6. Ms McLelland also advised that the tenant has had notice of the landlord's intentions since December 2021, and that she understands from another family member who is employed to work with the business, Mr McAlpine that the tenant is waiting to get the eviction order so that she can get an offer from the

Council for housing. Ms McLelland advised that she has not spoken herself to the Respondent but this is what she understands has been said.

Findings in Fact

1. The Applicant and the Respondent entered into a lease of the Property where the Applicant let the Property to the Respondent as tenant.
2. The lease commenced on 16th December 2019.
3. The tenancy is a private residential tenancy.
4. The tenancy is continuing with the Respondent living in the property with 2 children.
5. A notice to leave dated 15th December 2021 was served on the Respondent by hand delivery stating that no proceedings would be raised before 19th June 2022.
6. These proceedings were raised on 20th June 2022 and the application included a copy of the Notice to Leave.
7. A Section 11 notice has been served on Renfrewshire Council
8. The Applicant intends to sell the Property
9. The Applicant owns and lets out a portfolio of properties and wishes to retire and sell all the properties.
10. The Applicant has granted a power of attorney in favour of Ms Janette McLelland authorising her to act in connection with the sale of his heritable property in Scotland
11. The Respondent has not paid the full rent due.
12. The current rent arrears amount to £7390.

Reasons for Decision

1. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
2. The Notice to Leave was served by hand delivery which was given to the Respondent by Mr Duncan McAlpine on 15th December 2021 and the Respondent has signed it indicating it has been received.
3. The Application was also accompanied by evidence of how the ground was met namely by lodging a letter from a firms of solicitors advising they are instructed to market various properties owned by the applicant including the Property.
4. Grounds 1 required 6 months' notice under the rules which were then in place at the date of service by virtue of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 19th June 2022.
5. The Application was lodged on 20th June 2022. It was therefore lodged after the expiry of the Notice period and is therefore an application that the Tribunal can consider.

6. Ground 1 of Schedule 3 of the Act is entitled “Landlord intends to sell” and states
 - i. “It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord-
 - a. Is entitled to sell the Property and
 - 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.
7. 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
 - c. *And it is reasonable to do so*
8. The Tribunal accepted the verbal averments of Ms McLelland that the Applicant’s intention is to sell the Property. This is supported and evidenced by the written letter lodged by from Cochrane Dickie Estate Agents that they would be instructed to sell the Property.
9. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Ms McLelland that the Applicant no longer wishes to be a residential landlord, that although Mr Lambrecht owns the properties it is run as a family business and they have decided they need to retire. Ms McLelland herself deals with all the accounts and advised she wishes to retire. They are in the process of selling their other properties or proceeding to serve notices on the tenants of the remaining properties.
10. The Respondent has made one written submission on 22nd November 2023² claiming that she had a young baby born in July 2022 and had some health issues but did not make it clear if she was opposing the application. She has not made any further submissions despite being invited to do so and she has not attended today’s hearing. Ms McLelland advised that she deals with the business accounts and another member of the business Mr McAlpine has met with the tenant and believes she is waiting for an eviction order to present that to the Council in order to obtain other accommodation. Ms McLelland confirmed that the Respondent does receive benefits but has blocked these being paid directly to the landlord. Ms McLelland advised that she is not aware of there being any delay in the payment of benefits to the Respondent. She also confirmed the current arrears of rent are £7,930 and only 4 payments of £100 each have been paid since last November. As the monthly rent due is £440 the arrears are continually increasing.
11. The tribunal found Ms McLelland to be clear and credible in her evidence. The relevant notices have been given to the Respondent and she has now had notice of the Applicants intention to sell since December 2021, over 15 months ago. The Applicant runs a family business and they now wish to sell as the Applicant and Ms McClelland are getting older and find running the

business too onerous. The Respondent had not provided any further evidence for the Tribunal to take into account. Weighing up all the evidence the Tribunal was satisfied that it is reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property.

12. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

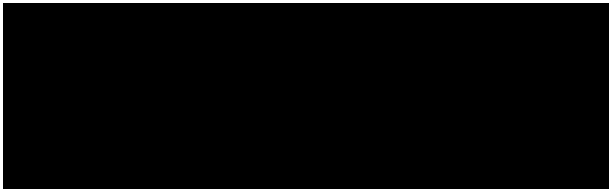
The Tribunal determined that the order for eviction sought by the Applicant should be granted

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

Date: 14th April 2023