



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/23/2480

Re: Property at 38 Bogwood Road, Mayfield, Dalkeith, EH22 5DZ (“the Property”)

Parties:

Mrs Hilary Forbes, 4 Virginia Terrace, Mill Road, Llanfairfechan Wales, LL33 0TH (“the Applicant”)

Ms Vikki (Pryde) Mayhem, 38 Bogwood Road, Mayfield, Dalkeith, EH22 5DZ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (Ordinary Member)

Decision

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 Respondents from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 25th July 2023 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to requests from the Tribunal:-
 - A copy of the Tenancy Agreement dated 16th December 2019
 - Copy Notice to Leave dated 27th April 2023
 - Evidence of service of the Notice to Leave by sheriff officers dated 28th April 2023
 - Affidavit from the Applicant
 - Confirmation of engagement with an estate agency dated 24th July 2023
 - Copy S 11 Notice to Midlothian Council.
 - Copy e-mail to Midlothian council.
 - Income and expenditure notes from the Applicant.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Ms Rosaleen Doyle from McEwan Fraser Legal Solicitors and the Applicant was not on the call initially but after a break in the proceedings joined the call to give evidence on her circumstances directly. The Respondent was on the call and advised as a preliminary matter that her name had changed from when the tenancy was entered into to Ms Vikki Mayhem due to her wish to have her name formally changed from Pryde.
4. Ms Doyle made a motion to change the name of the Respondent in the application to Ms Vikki (Pryde) Mayhem and this was accepted by the Tribunal given the request by the Respondent for this name to be used.
5. Ms Mayhem explained at the outset that she had no objection to the application and that she would have left if she could but that she could not afford another private rental and the Council had advised her she would need an order of eviction before they could or would assist. She advised she was seeking a council property and also made it clear she did not wish to wait 6 months before moving as it was causing her personal stress and she had been packing since Ms Forbes told her this was necessary.
6. Ms Doyle the Applicant's representative advised that she was instructed to seek an order for possession of the Property today and that the Applicant was seeking it on Ground 1 and Ground 1A preferably. She referred to the Affidavit and statement of income and expenditure that had been lodged with the application and asked if a further updated income and expenditure note had been received by the Tribunal from Friday 4th October. The Tribunal advised it had not received any late submissions and Ms Doyle explained it showed only a minor change in some expenses.
7. Ms Doyle advised that her client had only recently returned to the UK after living abroad, was going through a divorce and was renting privately herself as she had no-where else to live and could not afford to buy until this Property was sold. Her income was not, her client felt, sufficient for her to live on and the fact she was having to pay rent privately was draining her monthly income.
8. She advised that the notice to leave had been served appropriately on the tenant and that it would be reasonable for the order to be granted because the Landlord could not buy another property until she sold this one and in the meantime her savings were going down and an order for eviction was therefore reasonable. Ms Doyle indicated that if the Tribunal wished more information about the landlord's finances she could ask her to join the call. The Tribunal invited her to ask Mrs Forbes to join the call and Mrs Forbes joined the call after a short break.
9. Mrs Forbes confirmed that she had returned to the UK and had very little possessions when she returned. She advised that she is now retired and has a fixed income with no opportunity to increase it and has spent a lot of her savings on returning. She confirmed that her noted monthly outgoings do not include some extra expenses that have recently occurred such as ongoing vet bills for one of her elderly dogs and a gas maintenance bill which she cannot afford to pay on annual basis. She advised she is struggling to make ends meet each month and is only shopping in second hand shops for clothes and is unable to

maintain her previous standard of living or provide gifts she was used to doing for her family. The Applicant advised that she works out her budget on a daily basis and currently has £340 to last until the end of October. She confirmed she needs a car and is worried it will need further repairs as it is old and anything may happen to it. Mrs Forbes confirmed this is causing her stress and she wishes to sell the Property to allow her to buy a suitable home near her family.

Findings in Fact

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 16th December 2019.
2. The tenancy is continuing.
3. A notice to leave dated 27th April 2023 was served on the Respondent by email stating that no proceedings would be raised before 22nd July 2023
4. These proceedings were raised on 25th July 2023 and the application included a copy of the Notice to Leave.
5. The application is timeous.
6. A Section 11 notice has been served on Midlothian Council
7. The Applicant intends to sell the Property and wishes to do so after the Respondent leaves.
8. The Applicant is suffering financial hardship that will be alleviated when the Property is sold.
9. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

10. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 and Ground 1A of Schedule 3 of the Act as the relevant grounds of eviction.
11. The Notice to Leave was served by sheriff officer personally on the Respondent at the Property on 28th April 2023 .
12. Grounds 1 and 1A require 84 days' notice in terms of the Act. The Notice sets out the notice period as expiring on 22nd July 2023 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
13. The Application was lodged on 25th July 2023. It was therefore lodged after the expiry of the Notice period and before the end of 6 months after the specified date and is therefore an application that the Tribunal can consider.
14. 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 subparagraph (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.
- 15. 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*
- 16. Ground 1A of Schedule 3 is that the Landlord intends to sell property to alleviate financial hardship and states
 - (1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.
 - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) the landlord—
 - (i) is entitled to sell the let property,
 - (ii) is suffering financial hardship, and
 - iii) intends to alleviate that hardship by selling the let property for market value,or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
 - (b) the Tribunal is satisfied that it is reasonable to issue an eviction order.
- 17. The Tribunal accepted the written evidence and verbal evidence from the Applicant that she intends to sell the Property. The Applicant has stated both in her affidavit and in person that she has recently returned to Scotland from a period of living in Spain after a relationship breakdown, that she had little savings and these are now depleted as she returned only with 2 suitcases in the form of possessions and has had to rent a Property to live in and furnish it. The Applicant has confirmed that she requires to sell the Property to allow her to buy a suitable one for her to live in the UK and that she requires vacant possession to allow her to do this.
- 18. With regard to financial hardship the Applicant has provided details of her income which is now fixed as she is retired and her monthly expenditure. Although there is some surplus, the monthly expenditure only includes the monthly bills and does not allow for the purchase of other items such as clothing, entertainment, the cost of repairs or maintenance of items including her car which she advised is old nor any gifts to family. The Tribunal heard and was satisfied, that the Applicant is living on a much reduced standard of living, is buying clothes from charity or recycling shops, has to fund annual and other regular costs from this disposable income such as a recent repair to her car and additional vet fees for one of her 2 elderly dogs. The Applicant advised that gifts to her children and grandchildren have had to be much reduced due to her lack of capital and ongoing outgoings that she would not have if she could sell her house. Without selling the Property she cannot afford to buy herself a suitable property to live in and she wishes to buy one near her family. She is currently paying rental income which she would not otherwise need to do once the house was sold and she could buy another one

to live in. The Applicant advised she is keeping a note of her monthly expenditure, she has little savings and it is a constant struggle every month. The Tribunal accepted from this evidence that the Applicant intends to sell the Property and that she is suffering financial hardship and selling the Property would alleviate that hardship.

19. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Respondent spoke openly about understanding the Applicant's position, that she had not wished to stay in the Property but advised that she could not afford another private rent and had been advised by the Council that they would not assist her or provide accommodation until she had an eviction order that would be enforced within the next 2 months. The Respondent was clear that this ongoing situation was causing her stress, that she was ready to move and wished to do so as soon as the council could assist and so was not objecting to the application and in particular was not objecting to it being granted on Ground 1A.
20. Weighing up the evidence and taking note that the Applicant is struggling month to month to meet her obligations and cannot find suitable long term accommodation for her needs until she can sell the Property and that the Respondent is also keen for this to be resolved as it is causing her anxiety and she does not want a prolonged period of eviction, the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property and that she is doing so to alleviate financial hardship.
21. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1A 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: 9th October 2023

