



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/22/3105

Re: Property at 1 Willowtree Way, Motherwell, ML1 5FR (“the Property”)

Parties:

Mr Joe Sheridan, 22 Adamslie Drive, Kirkintilloch, G66 1BN (“the Applicant”)

Ms Mary McVey, 1 Willowtree Way, Motherwell, ML1 5FR (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Elizabeth Currie (Ordinary Member)

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant was present and was represented by Louise Crofton, Letting Manager, Your Move McLaughlin, 169 Main Street, Bellshill, ML4 1AH.

The Respondent was present and unrepresented.

3. Preliminary Matters/Background

This case called in December 2022 and was adjourned to a further Case Management Discussion in order that the Applicant’s representative could lodge further information pertaining to the application for the Tribunal to

consider the issue of reasonableness. The Tribunal issued directions. At this CMD the Applicant joined personally and was able to provide further information.

The Applicant's representative referred to the mortgage document lodged in January 2023 in response to the Directions issued by the Tribunal. Said document showed the mortgage monthly instalment for the property was £760 per month and the balance on the mortgage was £83,599.77. The Respondent confirmed she had received this information since the last CMD.

The Tribunal had before the last CMD received written representations dated 6th December 2022 from the Respondent.

There were no other preliminary matters discussed or raised by either party.

4. Case Management Discussion.

The Applicant

The Applicant's representative set out that the applicant sought an Eviction Order in order that he can sell the property. The Applicant thereafter set out his position directly to the Tribunal. He explained that he had rented the property out to move in with his girlfriend. She is now his wife and he has 2 stepsons. They wish to move on in life and buy a property together and to do so require to sell the property. The Applicant's step sons are 15 years and 17 years of age. The property they reside in also has a mortgage and the applicant owns no other property. The Applicant said he had not intended to become a landlord and the property was originally purchased for him to reside in himself and he had done so for 5 or 6 years before moving in with this then girlfriend. The Applicant said that he did not wish to make things difficult for the Respondent but his family wish to move on in life and get a property together but have been left unable to do so until an order for eviction is obtained.

The Respondent

The respondent said she was still in the same situation as at the previous CMD. She had continued to look for rental properties but she cannot afford market rents and is limited to where she can move due to employment, school and nursery commitments. The Respondent is still actively looking for properties and is in communication with local housing to try and obtain a property.

The Respondent explained she had remained in the property due to advice and to ensure she was not regarded as intentionally homeless. She did not wish to access homeless accommodation. She considered the eviction ban or moratorium applied to her and the Tribunal made clear the application and the Notice to Leave issued to her on 25th May 2022 fell before the relevant dates for the new legislation to apply. The Tribunal confirmed they could not provide the Respondent advice.

The respondent said that she did not want to prevent the application selling the property but she had nowhere to go. She had had many discussions with her councillor and local housing association.

Reasons for Decision and Findings in Fact

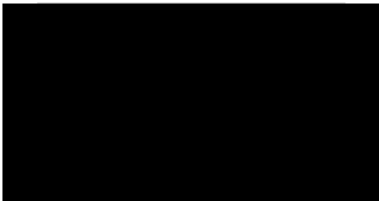
- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The evidence was not in dispute. The Tribunal had called for further information from the Applicant regarding his finances and this had been provided. The Respondent provided written representations.**
- 2. The Applicant sought an Order for Eviction on the ground that he sought to sell the property.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 30th April 2019. This was agreed.**
- 5. A Notice to Leave was sent to the Respondent on 25th May 2022. This was agreed.**
- 6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 1 Ground 1 of the 2016 Act intending to sell the property, is entitled to sell same and intends to market same for sale at market value. Estate agent information was lodged. The Applicant provided personal and credible reasons for sale.**
- 7. The Tribunal found that the requirements of Ground 1 of Part 1, Schedule 3 to the Act had been met.**
- 8. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period. There was no challenge to same.**
- 9. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 10. The Tribunal spent some considerable time looking at reasonableness. At the first CMD the Applicant's representative could not give details on the mortgage on the property and further reasons for the intention to sell. The Tribunal determined this was needed to look at reasonableness and the Applicant provided this information. He advised directly he had no other rental properties and had rented the property after moving in with his girlfriend who is now his wife. His family required to purchase a property together and have 2 dependents of their own. They cannot do so without selling the property and have been waiting to do so. The Respondent has 2 dependents and resides with them alone. They are 15 years and 3 years. She had found the property following a domestic abuse situation and the location is close to her employment, the school and her smallest child's nursery. The Respondent works 4 days a week and has been unable to find alternative affordable private accommodation. She has been proactive on a number of housing lists for alternative local authority accommodation but this had not been successful. The Tribunal can weigh the circumstances of the both parties in its discretion before determining the application. The Applicant**

had no other rental properties, a significant mortgage and monthly payment and wished to moved property with his family and purchase property together. He cannot do so without selling the property and had served notice on the Respondent in May 2022. The Respondent had had a lengthy period of notice in regards the Applicant's intentions but had been unable to secure alternative accommodation for her and her children within an area relevant to their commitments. In all the circumstances the Tribunal considered it was reasonable that the Applicant be able to sell the property in the particular circumstances given and that the Respondent had a significant period of notice with which to take steps. The Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020.

11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.



Karen Kirk

Legal Member/Chair

20th March 2023.

Date