



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/22/0509

Re: Property at 4 East Champanyie, Edinburgh, EH9 3EL (“the Property”)

Parties:

Ms Frances Moore, c/o 1B/1 Carmichael Place, Edinburgh, EH6 5PH (“the Applicant”)

Ms Stephanie Prabakaran and Mr Robert McDonald, both 4 East Champanyie, Edinburgh, EH9 3EL (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and issued an Eviction Order against the Respondent.

Background

BY application, dated 21 February 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 10 December 2018 at a rent of £1,150 per month and a Notice to Leave, dated 16 March 2021, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 20 February 2022. The application papers also included a copy of an email of 3 November 2021 from the Respondent, Ms Prabakaran to the Applicant’s letting agents in which she stated that she was currently going through a messy court case trying to keep her children safe, that her children loved staying in the Property and

that they had undergone a lot of upheaval recently and she was worried about having to move them while going through the court process.

On 14 May 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 4 June 2022. The Respondent did not make any written representations to the Tribunal.

A Case Management Discussion scheduled for 21 June 2022 was postponed at the request of the Respondent, who asked for additional time to obtain legal advice. The Applicant's letting agents objected to the request for a postponement, citing a number of alleged breaches of the Tenancy Agreement, but the Tribunal decided that it was in the interests of justice to grant the request.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 25 August 2022. The Applicant was present and was also represented by Mr Edward Paine, Director of Lettings of Clan Gordon Limited, letting agents, Edinburgh. The Respondent was represented by Ms Natasha McGourt, Housing and Money Adviser, Granton Information Centre. The Tribunal asked the Applicant's letting agents what evidence they intended to lead to support the statement in the application that the Applicant intends to sell the Property and to set out for the Tribunal their argument as to why it would be reasonable to issue an Eviction Order.

Mr Paine advised the Tribunal that the Applicant has retired and needs the funds from the sale of the Property to fund her retirement. She intends to sell as soon as she can obtain vacant possession. Her partner has health issues and is also having to retire. The Applicant has an interest-only mortgage over the Property. Mr Paine submitted that it would be reasonable to grant the application. The Applicant had given plenty of notice to the Respondent, recognising that she would require to find alternative accommodation. The Applicant added that she had obtained a Home Report about a year ago and Mr Paine told the Tribunal that the Applicant was reluctant to ask a surveyor to visit the Property, as the Respondent had been refusing access to the Applicant. He stated that there has also been a number of breaches of the Tenancy Agreement.

Ms McGourt told the Tribunal that the Respondent has been seeking alternative accommodation, both in the public and private sector. She had an appointment for a homelessness assessment on 29 September 2022. The Respondent has two children aged 12 and 9, who attend local primary and secondary schools and did not want their education disrupted by having to move to different schools if the Respondent could not secure alternative accommodation within the catchment area. The Applicant stated that she understood the children lived with their father in the Leith area on alternate weeks.

The Tribunal was unable to decide the application on the basis of the evidence before it. Accordingly, the Tribunal decided to adjourn consideration of the application to a full evidential Hearing, at which it would expect the Applicant to elaborate on her stated

reason for needing to sell the Property, namely that the sale proceeds are required to fund her retirement. The Tribunal would not require her to provide detailed financial information but would expect to be told whether she and her partner have occupational pensions. The Applicant should also provide evidence relating to the Home Report to which she referred and details of the amount outstanding on her mortgage. Both Parties should be prepared to address the Tribunal on the question of whether it would be reasonable to make an Eviction Order in the present case.

The Applicant submitted written representations on 15 September 2022. She stated that she had taken early retirement in August 2021 from her employment as a lecturer at Edinburgh College, as she had started looking after her two-year old grandson two days a week and could not combine that with her job. The proceeds of sale of the Property would pay off the interest-only mortgage of £175,000 over the Property and hopefully also the mortgage over her home. On 2 March 2021, she had asked a firm of solicitor estate agents to value the Property. It was not a Home Report. They suggested an asking price of £350,000. The fixed rate on the present mortgage over the Property was 2.78% and the Bank of Ireland had indicated that this would increase to 6.24%, increasing her monthly payments from £405 to around £1,000. The fixed rate on the mortgage over her home was due to expire in February 2023.

The Applicant provided the Tribunal with confirmation from Bank of Ireland that the mortgage over the Property was for £174,995 and that, as from 1 December 2022, her fixed-rate product would end and would be replaced by their standard variable rate of 6.24%. She also provided confirmation from Aikman Bell solicitors, Edinburgh that in March 2021, they had valued the Property at around £350,000 and from Santander that the amount outstanding on the mortgage over the Applicant's home was £108,985.72, with the loan product coming to an end on 3 February 2023. The Applicant also advised the Tribunal that she has an occupational pension and her husband has a personal pension.

The Respondent's representatives submitted written submissions on 20 September 2022, in which they stated that the Applicant had not accepted a suggestion from them that she could sell the Property to an investor with the Respondent *in situ*. They commented on a number of issues that had been raised in relation to the tenancy, but which were not relevant to the present application, which was based solely on the Applicant's contention that she wished to sell the Property. They stressed that, in relation to ongoing proceedings regarding custody of her children, it is incredibly important that the Respondent could show that she is able to provide a safe and secure home for them.

Hearing

A Hearing took place by means of a telephone conference call on the morning of 5 October 2022. The Applicant was present and was again represented by Mr Paine. The Respondent was not present but was again represented by Ms McGourt.

Miss McGourt confirmed that the appointment regarding a homelessness assessment had gone ahead, but that the Respondent was not awarded priority status pending the outcome of the present proceedings. She accepted that, if an Eviction Order were made, the family would be provided with temporary accommodation, but there was no

guarantee that they would be offered suitable accommodation or even that it would be within the same local authority area. The Respondent was not disputing the right of the Applicant to sell the Property, or her stated reason for wishing to sell. Ms McGourt understood that a Notice to Leave had not been served at the time of a telephone call from the Applicant's letting agents to the Respondent on 22 February 2021 or an email of 16 March 2021, so the Respondent had been unable immediately to approach the local authority to be rehoused. Ms McGourt, when advised by the Legal Member of the Tribunal that the Notice to Leave had been dated 16 March 2021 stated that she had not been in receipt of a full set of papers when the Respondent sought her assistance. She told the Tribunal that the Respondent Ms Prabakaran is in employment, but the Respondent Mr McDonald is not. They receive a joint Universal Credit payment which varies according to Ms Prabakaran's income.

On behalf of the Applicant, Mr Paine told the Tribunal that the rent of £1,150 for the Property had not increased in the period of nearly four years that the tenancy had been running. He estimated the current open market rent at £1,300 to £1,500. The Applicant had given as much notice as possible to enable the Respondent to secure alternative accommodation. She had had a valuation carried out by her solicitor estate agents, as she was giving almost a year's notice and a Home Report has a shelf life of only 12 weeks. The Applicant's mental health was suffering as a result of not being able to recover possession of the Property, which she required to sell in order to fund her retirement, particularly as it was likely that her mortgage payments would almost triple from December 2022. He asked the Tribunal to find that it was reasonable to issue an Eviction Order.

Reasons for Decision

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal was satisfied that the Applicant had correctly followed the procedure of serving a Notice to Leave. The minimum period of notice required was 84 days and the Tribunal noted that the Applicant had stated that she had given 11 months' notice, recognising that the Respondent would require to find alternative accommodation. The Tribunal was satisfied that the Applicant intends to sell the Property as soon as she can obtain vacant possession and that her reason for not having instructed a Home Report was entirely understandable. The Tribunal held, in the circumstances of the present case that the Applicant had satisfactorily evidenced her intention to sell, having obtained an estimate of value from her solicitor estate agents, whom she could not formally instruct without knowing that she could obtain vacant possession, and having provided details regarding the mortgage and the proposed increase in monthly payments from December 2022. Whilst fully recognising the personal circumstances

of the Respondent, the Tribunal's decision was that the Applicant, having retired, required to sell the Property in order to pay off the mortgage and fund her retirement and that it was reasonable to issue an Eviction Order.

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.

George Clark

Legal Member/Chair

5 October 2022
Date