

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/4375

Re: Property at Flat 3/1, 36 Sinclair Drive, Shawlands, Glasgow, G42 9QE (“the Property”)

Parties:

Mrs Susan MacKinlay, Nether Lyleston, Cardross, G82 5HF (“the Applicant”)

Miss Michelle Nelson, Flat 3/1, 36 Sinclair Drive, Shawlands, Glasgow, G42 9QE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application dated 8 December 2022 the Applicant’s representatives Ritehome Limited, Glasgow, applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of delivery, and a Section 11 Notice with proof of Delivery. In subsequent correspondence the Applicant’s representatives submitted confirmation of instructions from the Applicant to market the property for sale.
2. By Notice of Acceptance dated 16 March 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned to take place on 20 July 2023.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 14 June 2023.
4. By email dated 4 July 2023 the Respondent submitted written representations to the Tribunal.
5. By email dated 19 July the Respondent requested a postponement of the CMD due to ill health and this was granted and a further CMD was arranged to take place on 5 October 2023.

The Case Management Discussion

6. A CMD was held by teleconference on 5 October 2023. The Applicant did not attend but was represented by Mr Robert Nixon from the Applicant's representatives. The Respondent attended in person.
7. It was agreed that the parties entered into a Private Residential tenancy that commenced on 14 November 2018 at an initial rent of £475.00 per calendar month and that the rent was subsequently increased to £500.00 per month with effect from 7 January 2022. It was also agreed that the rent was paid up to date. The Tribunal noted that the Respondent had previously fallen into quite substantial rent arrears of £2450.00 but had then arranged to start to pay these off at the rate of £100.00 per month before borrowing money from her brother to clear the arrears completely.
8. It was not disputed that the Respondent had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act both by email and recorded delivery post on 6 December 2021 and that she had been given until 9 June 2023 to remove from the property before any proceedings would be commenced. It was also accepted that a Section 11 Notice had been sent to Glasgow City Council advising them of the commencement of the proceedings against the Respondent.
9. Mr Nixon explained that the Applicant and her husband owned a small portfolio of let properties but that they were now in their seventies and the Applicant's husband was seriously ill. He explained that the Applicant could no longer refinance the properties and it had been the Applicant and her husband's decision to divest themselves of their whole portfolio. He went on to explain that the Applicant's two properties 3/1 and 3/2 had been marketed for sale at the same time last year. He said a buyer for both properties had been found but only on condition of vacant possession. Mr Nixon went on to say that the tenant of one flat had moved out and the sale had gone through but that the Respondent had failed to engage with the Applicant's representatives and the sale of the property had fallen through. He said it had therefore been necessary to raise the current proceedings.
10. The Tribunal referred the Respondent to her written representations of 4 July and noted how the respondent's mental health issues had affected her ability

to look for alternative accommodation. The Respondent explained that she regularly checked online to see if there was anything suitable but said that her condition made it difficult to go to viewings and she thought that some people were in a better position than she was and she had not had any luck. She explained that she was not currently working due to her health problems following on from the pandemic. She explained that she had been in contact with her doctor about two months previously with a view to changing medication but her health was still not where she wanted it to be.

11. The Respondent said that she thought that the Applicant had been going to sell the property to another landlord and that she could then have remained in the property. For the Applicant, Mr Nixon said that his company would always hope to be able to retain the business if properties were sold with a tenant but that had not proved to be possible on this occasion. He said he had read the Respondent's written representations and was sympathetic to her position but that it was now almost two years since the Notice to Leave had been served and the Applicant was still not able to sell her property.
12. In response to questions from the Tribunal the Respondent confirmed that she was aged 32 and lived alone in the one-bedroom property. She said she had considered moving into a flat share but because she suffered from OCD, she thought that might make her mental health condition worse as she needed her own space. The Respondent said she had about two months ago submitted an application for housing to Glasgow City Council but had been concerned that she would be offered homeless accommodation which would be unsafe and she would not be able to cope given her condition. The Respondent went on to say that following on from that application someone had left her a voicemail but she had not responded to it and said that she had once again buried her head in the sand. The ordinary member of the Tribunal asked the Respondent if she had contacted any Housing Associations in the area and the Respondent said that she had not but that she would look into doing so. She accepted that she ought to be proactive. The respondent also confirmed that she had not sought any advice from any voluntary organisations or support groups and explained that she often found it difficult to leave her home. She also explained that if she did have to relocate, she was not sure how she would physically be able to do that because of her condition. The Respondent confirmed she was in receipt of Universal Credit and that the housing element did not cover the whole of the rent although she did receive some additional payments because of her ill health.
13. The Respondent confirmed that she did not dispute the facts as regards the Applicant's reasons for wishing to sell the property.
14. Mr Nixon confirmed he did not dispute the facts as stated by the Respondent with regards to her mental health. He submitted however that in all the circumstances it was reasonable that the order be granted and acknowledged that any order would be subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Findings in Fact

15. The parties entered into a Private Residential Tenancy agreement that commenced on 14 November 2018 initially at a rent of £475.00 per calendar month and subsequently increased in January 2022 to £500.00 per month.
16. The Respondent was served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act by email and recorded delivery post on 6 December 2021 giving 6 months' notice to leave the property before proceedings would be raised.
17. Intimation of these proceedings was given to Glasgow City Council by virtue of a Section 11 Notice by email on 8 December 2022.
18. The Applicant and her husband are in their seventies and are in the process of divesting themselves of their portfolio of let properties.
19. The Applicant's husband is seriously ill.
20. The Applicant has been unable to find a purchaser of the property prepared to retain the Respondent as a tenant.
21. The Applicant is no longer able to refinance the property.
22. An offer for the sale of the property was lost in 2022 as the Applicant could not give vacant possession.
23. The Respondent suffers from severe depression and anxiety and has a history of suicide attempts.
24. The Respondent is 32 years of age, unemployed and lives alone.
25. The Respondent is in receipt of Universal Credit and other benefits and finds it a struggle to meet the rent and has borrowed from her brother to clear substantial rent arrears.
26. The Respondent has not engaged with Glasgow City Council to any meaningful extent or with any Local Housing Associations since being served with the Notice to Leave.

Reasons for Decision

27. The Tribunal was satisfied from the Written representations and oral submissions that the parties entered into a private residential tenancy agreement that commenced on 14 November 2018 at an initial rent of £475.00 per month and that was subsequently increased to £500.00 per month.

28. The Tribunal was also satisfied that the Respondent was properly served with a valid Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act and that Glasgow City Council was given proper notice of the proceedings by way of a Section 11 Notice. The Tribunal therefore had to determine whether it was reasonable in all the circumstances to grant an order for the eviction of the Respondent from the property.
29. In exercising its discretion, the Tribunal has to balance the rights of both parties both of whom have competing interests. The Applicant is elderly with a husband who is seriously ill and they are financially no longer able to remortgage their properties and wish to liquidate their portfolio of properties to fund their retirement. Against that the Respondent is vulnerable because of her poor mental health and at times struggles to leave her home. She has on her own admission buried her head in the sand and not engaged to any meaningful extent with the local authority as regards being rehoused. She has not contacted any local housing associations who might have suitable accommodation for someone with her needs. The Tribunal was conscious of the fact that the Notice to Leave had been served on the Respondent in December 2021. The Tribunal was also aware that the Respondent had struggled to pay the rent and had ultimately had to borrow a substantial sum from her brother to clear the arrears. It may be that the Respondent would benefit from social housing rather than being in the private sector given her particular health issues. Whilst acknowledging that this was a finely balanced decision the Tribunal was satisfied that it was reasonable to grant the order for the eviction of the Respondent from the property. In doing so the Tribunal was aware that the Respondent would have a period of six months to find alternative accommodation and urged her to seek assistance from the local authority and others who would be able to give her the assistance she required.

Decision

30. The Tribunal being satisfied it had sufficient information before it and as the facts were not disputed determined a hearing was unnecessary and found the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the 2016 Act.

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.



**Graham Harding
Legal Member/Chair**

**5 October 2023
Date**