



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/22/0886

Re: Property at 30 Quality Street, Edinburgh, EH4 5BS (“the Property”)

Parties:

Ms Victoria Cullen, Mavisbank Walled Garden, Lasswade, EH18 1HY (“the Applicant”)

Mr David Michael Hughes, 30 Quality Street, Edinburgh, EH4 5BS (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent, and that the Private Residential Tenancy between the Applicant and the Respondent terminated on 4 August 2022

FINDING IN FACT

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy Agreement which commenced on 5 July 2019.
2. The contractual monthly rent is £1,395.
3. The Applicant intends to sell the Property.
4. The Respondent owes substantial rent arrears to the Applicant.
5. The Applicant desires to sell the Property to raise finance to pay outstanding debts.
6. The Applicant’s health has been detrimentally affected by the stress associated with the Respondent’s conduct during his tenancy.
7. The Respondent resides at the Property with his 15 year old son.

8. The Respondent's son has dyslexia.
9. The Respondent's son's learning needs are met by learning support provided by his school and online.
10. Neither the Respondent nor his son access local support services.
11. The Respondent works remotely.
12. The Respondent is self-employed.
13. There are other similar properties for let in the area of the Property at a rent which is higher than that under the PRT between the parties.

FINDING IN FACT AND LAW

1. In all of the circumstances, it is reasonable to grant the eviction order.
2. The Private Residential Tenancy came to an end on 4 August 2022.

STATEMENT OF REASONS

1. This Application called for a Hearing by teleconference call on 3 August 2022. The Applicant was represented by Mr Wright, solicitor. The Respondent was personally present on the call.
2. This is an Application for an eviction order. The Applicant seeks to rely on ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). She claims that she intends to sell the property, and that it is reasonable to grant an eviction order.
3. This Application previously called for a Case Management Discussion on 14 June 2022. At the CMD, it became clear that the Respondent accepts that he is the tenant of the Applicant under a Private Residential Tenancy Agreement and that he received a valid Notice to Leave. His position was simple: he did not believe that the Applicant genuinely intended to sell the property, and in any event it was not reasonable to grant an eviction order. The Hearing was fixed to determine those two matters.

Evidence

Victoria Anne Cullen

4. The Applicant spoke to her intention to sell the property. She referred to correspondence she has had with Simpson & Marwick, solicitors and estate agents, regarding their instruction to do so. She spoke to a marketing report obtained from Simpson & Marwick. She confirmed that Simpson & Marwick had undertaken a "drive by" valuation. She spoke to having obtained a quotation from Umega Estate Agents to market the property, but to preferring Simpson & Marwick. She confirmed that Richard Loudon of Simpson & Marwick had purchased the Property for her, and was familiar with it.
5. The Applicant went on to speak about her financial position. She said that she was in receipt of state pension of approximately £650 per month. She had a private pension, but it was modest and was not due to start paying out for another few years. It was anticipated that this would add annual income of £500. She also derived income from a Trust Fund that was principally for the

benefit of her children. That income was approximately £3,000 per year. Beyond that, the Applicant's only income was from the Property, but she had not received income from the Property over the past few years due to the Respondent's non-payment of rent.

6. The Applicant said that she had accrued debts. In particular, she referred to legal costs in the region of £8,000, a loan for replacement of windows, costs incurred in undertaking repairs to the Property (including in compliance with a previous Repairing Standards Enforcement Order) and management fees to Umega. She said that the Respondent was in substantial rent arrears. She spoke to the Tribunal having recently granted an order for payment against the Respondent of £21,783.50, which was currently subject to an application by the Respondent for permission to appeal. Taken together, the Applicant said that she was "out of pocket" in a sum in excess of £30,000 over the preceding three years.
7. The Applicant asserted that her health was suffering as a consequence of the Respondent's continued occupation of the Property. She spoke of being stressed, and having been prescribed medication.
8. Under cross examination, the Applicant rejected the suggestion that she was not serious about selling the Property, and that these proceedings were a ruse. She provided some further detail about her asset position, and explained that she did not wish to liquidate those other assets to finance her debts. The Applicant was firm in her position: she no longer wished to be a residential landlord due to her experience with the Respondent. She wished to sell the Property. The Applicant also confirmed that she was aware that if she obtained an eviction order and did not subsequently sell the Property then she could be liable to the Respondent for a Wrongful Termination Order.
9. The Applicant acknowledged that she had received two recent payments from the Respondent of £900 in each of June and July (£1,800 in total), which was less than the contractual monthly rent for the months of June and July. She confirmed that she had landlords insurance, but no cover for rental voids.
10. The Applicant confirmed that the Property had lain largely empty during the period 2015 until 2019 when the Respondent became her tenant. She accepted that she did not derive an income from the Property during that time, but asserted that her outgoings were less. In particular, she had not required to make the substantial payments towards repairs that she recently has. She said that she had kept the Property empty in case her daughter and her husband had returned from Kuala Lumpur, where they were teaching, in order that they would have a place to live until they were able to recover possession of their own property from their tenants. However, in 2019, following discussions with her children, the Applicant determined to let the Property, which resulted in the Respondent taking possession.

11. The Applicant noted that the Respondent was running a business from the Property. Her position was that this was prohibited under the Tenancy Agreement.

David Michael Hughes

12. The Respondent gave evidence next. He spoke to doubting that the Applicant had any real intention to sell the Property. He suggested that the marketing report and other valuations had not incurred a cost, and that if the Applicant had a real intention to sell then she would have obtained a paid valuation or a Home Report. Separately, the Respondent referred to a previous attempt to evict him which had been withdrawn. That application had suggested that the Applicant wished a family member to reside in the Property.
13. The Respondent also attacked what he perceived to be a lack of investment strategy and planning by the Applicant as indicative that she had no desire to sell. His evidence was that a sale of the Property did not make financial sense. The Applicant required the income, and the Property ought to allow for an income. It was put to the Respondent that his own conduct during the Tenancy had perhaps put the Applicant off being a landlord, and he accepted that was a possibility.
14. The Respondent said that the Applicant had not looked after the Property like someone who intended to market it for sale. He said that repairs had been undertaken only through force via the Tribunal. If the Applicant truly intended to sell, he said, then she would have sought to maximise the value of the asset. When it was put to him that the Applicant may view the Property as a liability rather than an asset standing the continuing expenditure and lack of payment of rent, and that she may wish to shed that liability, the Respondent accepted that was a viable alternative view.
15. The Respondent said that he did not believe the Applicant's evidence as to her financial position. He claimed that the Applicant had been vague about her assets and had sought to hide her finances, but gave no specific examples of that having happened.
16. The Respondent spoke to living at the Property with his 15 year old son. He said that his son has dyslexia and additional learning support needs. Those needs are met through a combination of support at his school and online support. His son requires stability. He requires to live within walking distance of his school. His son does not access any other local support services. His son's mother lives locally, but has a stated intention to move away. She, he said, is a source of instability in her son's life.
17. The Respondent is a self-employed consultant. He works principally for a firm that builds online 3-D office environments, mostly for third sector bodies. He spoke of his employment and earning situation being substantially improved from when the Covid-19 pandemic began. He works remotely. He does not access any local services.

18. The Respondent spoke to eviction having a potentially detrimental effect on his current situation. His son is about to go back to school and requires stability. He expected a financial impact of needing to move. He had made enquiries with Shelter, the local authority and EdIndex regarding affordable housing. He had undertaken his own property searches, but the rent for comparable properties was generally between £1,600 and £2,000 per calendar month, which was outwith his price range.
19. The Respondent advised that he had made two payments of £900 and intended to pay £1,100 in August towards his rent. He accepted that this was less than the contractual monthly rent that he was due to pay. He said that he could afford to pay more but, standing his appeal, he felt that these payments were "appropriate".
20. Under cross examination, the Respondent said that he had been seeking to make arrangements to pay his arrears, which he accepted were substantial. He spoke of discussions with commercial and private lenders, as well as family members, but offered no documentary evidence to support those discussions having taken place or any offer of loan to suggest that financing had been obtained.
21. The Respondent spoke of increasing his savings so that, when his appeal in the rent arrears case was determined, he could make lump sum payment. He said that his current savings were approximately £7,000, which was about £3,000 less than what he had previously told the Tribunal in his rent arrears action. He said that, on reflection, he could not remember what the figure was.
22. The Respondent said that he was keen to resolve the dispute, and had offered a number of proposals that would meet the Applicant's needs without requiring eviction. He said that those proposals were put to Mr Wright but that the Applicant had not engaged with those proposals. When Mr Wright suggested that he could not recall any proposal, the Respondent asked for a moment to check his emails. He then made reference to an email in April 2022 which suggested he was open to discussions, but made no proposals. He then referred to an email dated 12 June 2022 where he offered to vacate the Property by 5 October 2022, pay rent at 75% of the contractual sum, and enter into discussions about paying his arrears. He then moved to read out the response that he received from Mr Wright, rejecting the offer and making a counterproposal; which tended to suggest that the Applicant had, in fact, engaged in settlement discussions.
23. The Respondent was asked to confirm that he had driven a car into a wall at the Property, undertaken to pay for the damage caused, and subsequently not paid for it. He accepted that was true.
24. The Respondent was asked to confirm that he had been successfully pursued by a previous landlord for payment of rent arrears. He accepted that, but invited the Tribunal to look into that decision given that there were other

circumstances in that case regarding dampness in the Property. He rejected the suggestion that this demonstrated a pattern of behaviour whereby he simply does not pay his rent.

Assessment

25. The Tribunal considered that the Applicant was a credible and reliable witness. Though she evidently struggled to control her ire for the Respondent at times, her evidence was straight-forward, to the point, consistent, and given freely. The Tribunal accepted her evidence in full.
26. The Tribunal did not consider that the Respondent was credible or reliable. His evidence tended towards sweeping generalised statements. It was vague at times. He repeatedly asserted that he had made enquiries about funding payment of his arrears, which he admitted were substantial, but offered no specific examples. He said that he could afford his rent, but that he had not paid the full rent for no reason other than he himself did not think it appropriate to do so. Put simply, the Tribunal formed a very negative opinion of the Respondent. The Tribunal had no confidence in his assertions that he intended to meet his ongoing contractual obligations let alone make payments towards his arrears. The Tribunal was satisfied that the Respondent's evidence, insofar as related to his son and to his own employment, was true. Beyond that, the Tribunal rejected his evidence.

Decision

27. In terms of the 2016 Act:-

"51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier 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 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3, Ground 1 Landlord intends to sell

- (1) It is an eviction ground that the landlord intends to sell the let property.

- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—
 - (a) is entitled to sell the let property,
 - (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, and
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
 - (3) 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.”
28. The first question for the Tribunal is whether the Applicant is entitled to sell the Property. She is the heritable proprietor of it. The Tribunal is satisfied that she is entitled to sell it.
29. The second question is whether she intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. The Tribunal accepted the Applicant’s evidence that she intended to sell the property. She has already instructed Simpson & Marwick to commence work preparing for the marketing of the Property. The Tribunal is entirely satisfied that the Applicant intends to sell the Property, for the reasons that she outlined.
30. Finally, the Tribunal requires to determine whether it is reasonable to grant an eviction order. Having considered all of the circumstances of the case as presented to the Tribunal, the Tribunal is satisfied that it is reasonable to grant an eviction order. Notwithstanding the impact that eviction is likely to have on the Respondent and his son, the Tribunal is satisfied that on balance the Applicant stood to suffer more from a failure to grant the order than the Respondent stood to suffer from the grant of the order. Of particular importance was the Applicant’s general desire to no longer be a residential landlord, the substantial rent arrears that the Respondent owed to the Applicant (irrespective of whether he is ultimately allowed permission to appeal), and the lack of any real prospect that the Respondent would meet his contractual obligation to pay rent.
31. For all of those reasons, the Tribunal granted the eviction order.

32. For completeness, in terms of section 51(4) of the 2016 Act, the Tribunal determined that the Private Residential Tenancy came to an end on 4 August 2022.

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.

Andrew Upton

04/08/22

Legal Member/Chair

Date