



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: Reference number: FTS/HPC/EV/22/3166

Property: 1/1, 55 St Mungo Avenue, Glasgow, G4 0PL (“The property”)

Parties:

Archibald Hutton and Georgina Hutton, residing together at 15 Carrickstone View, Westerwood, Cumbernauld, North Lanarkshire, G68 0BB (“the Applicant”)

And

Ms Batun Mohamed, residing at 1/1, 55 St Mungo Avenue, Glasgow, G4 0PL (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Ms Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of schedule 3 to the 2016 Act.

Background

1. By application (made on form E) dated 31 August 2022, the applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for an order for repossession of the property from the respondent, relying on Ground 1 of schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016. The applicants want to sell the property.

2. By interlocutor dated 29 September 2022, the application was referred to this tribunal. On 14 November 2022 the First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

3. The respondent lodged detailed written representations on 5 December 2022. The applicant submitted further representations on 14 December 2022

4. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 14 December 2022. The Applicants were represented by Mr R Bar of DJ Alexander. The respondent was represented by Ms K Cochrane of Govan Law Centre.

5. The case was continued to an evidential hearing to determine whether or not it is reasonable to grant an order for repossession. The evidential hearing took place at 10am on 7 March 2023 by telephone conference. The Applicants were represented by Mr R Bar of DJ Alexander. The respondent was represented by Ms K Cochrane of Govan Law Centre. All parties were present. The respondent was assisted by a Somali interpreter.

Findings in Fact

4. The tribunal found the following facts to be either admitted or proved

(i) On 01 March 2021 the applicants and respondent entered into a private residential tenancy agreement. That tenancy agreement was varied on 1 September 2021 because the respondent's 21 year old daughter moved out of the property to live with her aunt.

(ii) On 22 February 2022 the applicants served a notice to leave on the respondent. The applicants are joint heritable proprietors of the property and want to sell the property.

(iii) On 01 September 2022 the applicants instructed estate agents to sell the property.

(iv) The respondent remains in the property with three of her children, who are aged 13, 15 & 17. The property has three bedrooms. The respondent's 21-year-old daughter occasionally comes to stay with the respondent. The respondent regularly sleeps in the living room, so that her children can have a bedroom each.

(v) The applicants purchased the property in 2017 from the estate of one of their late parents. One of the applicants is past retirement age, the other is approaching retirement age. Both applicants want to make provision for their retirement. One applicant intended to retire last year, but was unable to do so because their pension provision is inadequate.

(vi) Both applicants want to sell the house that they live in and sell the property which is the subject of this application, so that they can make financial provision for their retirement and so that they can move close to their independent adult children.

(vii) Neither of the applicants in perfect health. One of the applicants has high blood pressure, type II diabetes, visual impairment, heart murmur, and mitral valve regurgitation. The second applicant suffered a TIA approximately 4 years ago and recently displayed signs of heart disease. Neither applicant is able to work full-time any more. Both applicants continued to work part-time, but find commitment to part-time work to be increasingly difficult.

(viii) The property is burdened with a mortgage. A fixed term mortgage deal comes to an end in June this year, when it is anticipated that the monthly mortgage payments will increase significantly. The applicants' finances are stretched. The rental received for the property services the mortgage on the property, together with the letting costs. The applicants use their earned-income to meet the cost of repairs to the property.

(ix) The respondent's three youngest children are in secondary school. They go to Alkhalil College, which is just over 4 miles away from the property, on the southside of Glasgow. They travel there by bus. The bus ride takes about 25 minutes.

(x) The respondent 17-year-old child is in fifth year of secondary school and will sit his Highers in May 2023. The respondent's 15-year-old is in fourth year of secondary school and is due to sit NAT5 examinations in May 2023. The respondent's youngest child is in second year of secondary school.

(xi) The respondent has not viewed any alternative properties, but has registered with New Gorbals Housing Association, Govanhill Housing Association, Rutherglen & Cambuslang Housing Association, and Wheatly Group. She has bid for accommodation with each of those housing associations regularly, but unsuccessfully.

(x) The respondent has looked for alternative private residential tenancies, but cannot afford rental on the private market. The respondent works part-time. Her income is supplemented by benefits. Most of her current rental is funded by the housing element of Universal Credit.

(xi) The respondent is willing to accept a three-bedroom property if one is available. Her greatest fear is disruption to the lives of her children. The respondent is helped in her search for alternative accommodation by a caseworker from Wheatly Group who searches for accommodation which might be available from housing associations operating in the Glasgow city area. The respondent has been in touch with Positive Housing recently, who are making

enquiries about the availability of property in the Springburn and Sighthill districts of Glasgow.

(xii) It is reasonable to grant an order for repossession of the property, but to delay enforcement of the order until the appellant's 15-year-old & 17-year-old children have finished their exams.

Reasons for the Decision

5. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 1 of part 3 of schedule 3 to the 2016 Act is established.

6. The applicants purchased this property as a pension investment in 2017. They have rented the property out on two previous occasions, and entered into the current private residential tenancy agreement knowing that the transition to retirement could be anticipated in the near future.

7. The respondent is realistically concerned about where she will next live. The respondent has registered with various housing associations. Her own enquiries confirm that she cannot afford another private residential tenancy. Although no properties have yet been made available to the appellant by housing associations, she now enjoys the support of a caseworker from Wheatly homes and recently engaged with support from Positive Action for Housing.

9. In respect that the respondent is worried about finding alternative accommodation, and finds market forces against her, there is nothing which makes the respondent's position different from other Glasgow residents looking for alternative accommodation. What is important in this case, is the interests of the respondent's children.

10. On the one hand, the applicants are a couple who are not in good health and want to retire. The property is crucial to their retirement plans. If they are free to sell this property and the property that they currently live in, they can clear their debts, limit their financial obligations, move closer to their adult children, and move on to their next stage of life - as a retired couple with a restricted income but free from debt.

11. If the applicants cannot sell this property, they remain liable for a mortgage which they struggle to afford, & the cost of repairs to the property. The rental income is less than the expense of maintaining the property and the cost of maintaining the borrowing the property. What should be an asset will become a financial burden at a time when their earning capacity is diminishing because of a combination of advancing years and increasing health concerns.

12. If an order for repossession is granted the respondent will have to find alternative accommodation. The private rental market is too expensive for the respondent. She now has to rely on the social housing sector. Those factors are a concern, but they simply place the appellant in a similar position to a significant proportion of tenants in the Glasgow area. The relevant question is whether or not an order for repossession will have a deleterious effect on the welfare and interests of the appellant's teenage children.

13. All that we know about the appellant's teenage children is that they live with the appellant and that they are in secondary education. The property is a 25 minute bus ride from the school. The 15-year-old and the 17-year-old children are about to sit exams which matter. The exam period will be over by the end of May 2023.

14. We have a letter from the children's headteacher. He speaks with concern about the adverse effect a repossession order might have on all three children.

15. When we consider each strand of evidence and balance the effect of a repossession order on the applicants against the effect of a repossession order on the respondent and her children, we find that the balance of reasonableness falls in favour of the applicants, but provision must be made to ensure that the order does not unduly affect the education, interests, and welfare of the respondent's three children.

16. On the facts as we find them to be, it is reasonable to grant an order for repossession, but only if enforcement of the order is delayed to enable the respondent's 15-year-old and 17-year-old to comfortably complete their examination syllabus. Delaying enforcement until mid-June 2023, will enable the respondent's children to complete their exams, and will enable all three of the teenage children to complete this academic year without threat of eviction.

17. This is a case where it is in the interests of all parties to move on. The respondent has had notice that their tenancy may end for the last 13 months. The order which we make cannot be enforced for another three months. The respondent has support of a housing caseworker and active involvement with a number of housing associations. A finite date for the termination of this tenancy should serve to focus attentions on securing alternative accommodation for a single mother and her teenage children.

18. When we balance the interests of the applicants against the interests of the respondent, we find that it is reasonable to grant an order for possession of the property, which cannot be enforced before 16 June 2023.

19. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of schedule 3 to 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

Legal Member

7 March 2023

Date