



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/22/3541

Re: Property at 3/2 7 Walker Street, Paisley, PA1 2EN (“the Property”)

Parties:

Mr Hendrick Lambrecht, Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant”)

Ms Christine Durning, 3/2 7 Walker Street, Paisley, PA1 2EN (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 2pm on 23 February 2023, by teleconference. The Applicant was represented on the call by Ms Janette McLelland. The Respondent called in person.

- Findings in Fact

1. The Applicant lets the Property to the Respondent in terms of a private residential tenancy agreement with a start date of 4 December 2020.
2. On 17 March 2022, the Applicant served a notice to leave on the Respondent, indicating that he would be seeking her eviction on the ground that he wished to sell the Property (Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act')).
3. The notice to leave indicated that proceedings would be raised no sooner than 26 September 2022.
4. On 28 September 2022, the Applicant served a notice under s.11 of the Homeless etc. (Scotland) Act 2003 on the local authority.
5. On the same date, this application was made.
6. The Applicant is the owner of the Property.
7. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
8. The Property forms part of a portfolio of properties that the Applicant owns, all of which will eventually be sold, as he wishes to retire from the letting business.
9. The Property is to be sold next in this process on account of its mortgage position and valuation.
10. The Respondent has applied to the local authority to be rehoused; but has not done so on the basis that she is at risk of homelessness.

11. The Respondent was offered a flat by the local authority, but this offer was withdrawn when she pointed out that it was unsuitable, due to her health needs.

12. The Respondent wishes to stay in the Property, in part, due to its proximity to her ex-partner, whom she cares for on a daily basis.

13. It is reasonable for an eviction order to be made in all the circumstances.

- Reasons for Decision

14. As a preliminary matter, the Tribunal noted that the date entered on the notice to leave did not comply with the requirements of s.62(4) of the Act, in that it gave a date after the first day following the expiry of the notice period as the first date that proceedings could be raised. The Tribunal agreed that the terms of s.73 of the Act would have effect in this case, however, since the error in question does not materially affect the effect of the notice. It has only the effect of giving slightly longer notice to the Respondent of the landlord's intention than is required by law. The notice therefore was effective and could be relied on by the Applicant in this application.

15. In terms of the application itself, there was no opposition to the Applicant's position that he was entitled to sell the Property and intended (at least) to market it within 3 months of the Respondent vacating it. The Respondent did however suggest that it was not reasonable to grant the eviction at this time, due to her personal circumstances and the fact that she was awaiting rehousing by the local authority. She indicated that she had not applied for rehousing on the basis of being at risk homelessness, as she had been advised that she could not do so, due to her medical condition and her having a dog.

16. The Applicant's representative pointed out that the notice to leave had been served 11 months ago and that he therefore had already waited a significant period of time for the Respondent to make alternative arrangements. He is in

the process of selling off all of his rental properties as he wishes to retire from letting altogether.

17. The Tribunal had considerable sympathy for the Respondent's position, but ultimately felt that it was reasonable to grant the eviction order. It doubted the advice that she had received in regard to applying for rehousing on the basis of homelessness; but, in any event, considered that the local authority would have to take more urgent action in circumstances where there an eviction order had been granted. That appeared to be the only way to resolve the current deadlock. The Respondent had been given almost a year to make alternative arrangements and it was not reasonable to force the Applicant to delay effecting his retirement plans for any longer.

- Decision

Eviction order granted.

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.

Nairn Young

06 March 2023

Legal Member/Chair

Date

