



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/22/3923

Re: Property at 36 Mybster Place, Glasgow, Drumoyne, G51 4BX (“the Property”)

Parties:

Mr Alan Beattie, 125 Ravenscraig Drive, Glasgow, G53 6QB (“the Applicant”)

Carolann Clark, 36 Mybster Place, Glasgow, Drumoyne, G51 4BX (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant's agent Gilson Gray LLP on 26 October 2022 under Ground 1 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement between the parties over the property commencing on 24 October 2021.
 - b. S 11 notice to the Local Authority
 - c. Email sending same dated 25 October 2022
 - d. Notice to Leave to Respondent dated 28 July 2022 stating as the date on which proceedings can first be raised 25 October 2022.
 - e. Certificate of service of same on the Respondent by Sheriff Officers on 1 August 2022.
 - f. Letter dated 1 February 2022 from Burgh Properties Limited to Applicant.

3. The case documents are referred to for their terms and held to be incorporated herein.
4. On 21 December 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No formal representations were received from the Respondent.

B: Case Management Discussion

1. The Applicant's representative Mr Gray and the Respondent Ms Clark participated in the CMD.
2. The legal member explained the purpose of the CMD.
3. Ms Clark stated that the application was not opposed. She understood that the landlord required to sell the property and had it been up to her she would have moved out much sooner. However, she was advised that in order for her to receive help finding alternative accommodation through social housing she would have to have been made homeless. She has no other accommodation and has two disabled sons. She advised she had received legal advice in the matter and had discussed the situation with several agencies and on the basis of these discussions and advice she was content for an eviction order to be granted today rather than delaying the matter further.
4. Mr Gray advised that the relationship between the landlord and the tenant was amicable and the Respondent had been a good tenant but the landlord had been wishing to sell the property for over a year. The company providing the letter evidencing this had also referred the Applicant to the legal representatives in July 2022. This had now been going on for months and whilst the landlord appreciates the situation, he needs the property back to sell it and this was not disputed.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 24 October 2021.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.
4. Since at least 1 February 2022 the landlord, who is the sole owner of the property, has had the intention to sell the property and he has engaged Burgh Properties Ltd to act on his behalf in this sale.
5. The notice to leave on ground 1 of schedule 3 of the Act gave the correct notice period and was served on 1 August 2022 by Sheriff Officers.
6. The Applicant provided the required S 11 notice and proof of service of same on the local authority.
7. The Respondent agreed that the order should be granted.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

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 or must 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.

Grounds under Schedule 3 of the 2016 Act

Landlord intends to sell

1(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.

2. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Mr Gray and Ms Clark at the CMD. The Respondent has not made any representations and did not oppose the application. She stated this clearly and also confirmed that she had had the benefit of legal advice on the matter. She stated that once there is an eviction order she will be able to be assessed for assistance with housing by the Council and she has already been in contact with various agencies and Shelter regarding this. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. The facts of the case are not in dispute.

3. The Tribunal found that Ground 1 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Applicant had produced correspondence showing that he had instructed an agent with regard to the sale of the property as early as February 2022. The Respondent had been aware of his intention. The Respondent specifically did not challenge the reasonableness of an eviction. She agrees that the way forward will be for her to be re-housed according to the needs of her and her sons.

4. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

10. As the Notice to Leave was served on 1 August 2022 and the application received by the Tribunal on 26 October 2022, the application is not affected by the provisions of schedule 2 of the Cost of Living (Tenant Protection) (Scotland) 2022. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 18 March 2023.

E : Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 of Schedule 3 of the Act

F: 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.

**Petra Hennig McFatridge
Legal Member/Chair**

**15 February 2023
Date**