

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 (Act)

Chamber Ref: FTS/HPC/EV/22/4014

Re: Property at 19 Guthrie Street, Letham, Angus, DD8 2PS (“the Property”)

Parties:

Mrs Ellen Langdon, Mr Colin Langdon, 61/1 Warrender Park Road, Edinburgh, EH9 1ES (“the Applicant”)

Mrs Fiona Messeter, Mr Paul Messeter, 19 Guthrie Street, Letham, Angus, DD8 2PS (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted subject to the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022..

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to sell the Property and for eviction and recovery of possession on Ground 1 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 3 November 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 13 December 2019;

3. Notice to Leave dated 28 July 2022 and served by email on that date;
4. Section 11 Notice to Local Authority and confirmation of receipt;
5. Terms of engagement with solicitors confirming instruction to market and sell the Property dated 2 November 2022;
6. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 15 February 2023;
7. Written Representations from the Respondent dated 24 February, 5 and 13 March 2023 enclosing photographs;
8. Written Representations from the Applicant received 9 and 15 March 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 23 March 2023. The Applicants did participate and were represented by their Letting Agent. The Respondents participated and represented themselves.

The Applicant's Representative confirmed the sale of the Property was required by the Applicants due to their financial situation, the cost of upkeep of the Property and the Second Applicant's health all as more particularly detailed in the Written Representations.

The Applicants were in rented accommodation at the moment. They owned an additional one bedroom property which they intended to sell once they had sold the Property. They then intended to purchase a 3 bedroom property for themselves and their 2 teenage boys.

The Respondents position was clearly set out in their Written Representations of 24 February 2023. The Property had been their home for some years. The First Respondent was vulnerable and suffered from health conditions disclosed in the Written Representations. The Property was ideally suited for the Respondents given it was all on one level. Respondents lived in the Property with 2 of their 3 daughters both of whom attended college and school respectively in the locality. The Respondents had made contact with the local authority, private providers and social housing providers without success.

The Respondents were also pursuing mortgage applications to see if they could potentially purchase the Property or an alternative. The Respondents were also seeking to be accepted for the LIFT Scheme.

Having heard from the Parties the Tribunal had regard to the terms of Ground 1:

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.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 13 December 2019;
2. The monthly rent was £1,000;
3. The Applicants are the owner of the Property and intend to sell it or at least put it up for sale within 3 months of the Respondents ceasing to occupy it;
4. Notice to Leave had been served on the Respondents by email;
5. The Applicants have engaged solicitors and estate agents to market and sell the Property;
6. Section 11 notification had been served on the local authority;
7. The Applicants' financial situation is such that they can no longer afford the Property and it needs to be sold so they can stop renting and purchase a home for themselves and their sons;
8. The Second Applicant's health was suffering as detailed in the Written Representations;
9. The First Respondent was vulnerable and suffered from health conditions disclosed in the Written Representations. The Respondents lived in the Property with 2 of their 3 daughters both of whom attended college and school respectively in the locality. The Respondents had made contact with the local authority and social housing providers without success.
10. The Respondents were also pursuing mortgage applications to see if they could potentially purchase the Property or an alternative. The Respondents were also seeking to be accepted for the LIFT Scheme.
11. It is reasonable to grant the order for recovery of possession.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought.

This was a difficult case where there were clearly competing interests. The Tribunal sought to balance the competing interests and make a fair and just decision. The Tribunal determined that it would be reasonable to grant the order in the knowledge that the order would be subject to the suspensive conditions of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**. This would give the Applicants certainty

as to when they would have vacant possession and the ability to market and sell the Property. This would also afford the Respondents time to secure alternative accommodation, secure mortgage finance for a prospective offer to buy the Property and priority with the local authority for alternative accommodation.

The Tribunal was satisfied that Ground 1 had been established and accordingly granted the application for eviction and recovery of possession.

The Tribunal considered the terms of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** which clearly applied to the application by virtue of the application being received after the commencement date of the Act.

The Tribunal granted the order with the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the **Cost of Living (Tenant Protection) (Scotland) Act 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.

23 March 2023

Legal Member/Chair

Date