



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/23/1145

Re: Property at 3 Castlehill Quadrant, Dumbarton, G82 5AH (“the Property”)

Parties:

Mrs Catherine Booth, 34 Lomond Drive, Dumbarton, G82 3AS (“the Applicant”)

Miss Louise Walker, 3 Castlehill Quadrant, Dumbarton, G82 5AH (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:
 - a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. letter from an estate agent

3. This was a case management discussion on 2 October 2023. The applicant Catherine Booth appeared. The respondent did not appear. Service of the application had been made on the respondent on 24 August 2023. The tribunal was entitled to continue with the case management discussion and did so.

Discussion

4. The applicant initially advised that she was seeking an order for recovery of the possession of the property under ground 1A (intention to sell due to financial hardship). There was initial discussion about the fact that the notice to leave was sought eviction under ground 1 only, intention to sell although the application itself referred to ground 1A intention to sell due to financial hardship. The applicant asked to be allowed to bring her application under ground 1A.
5. Amendment of the ground was a matter for the tribunal to determine at the case management discussion. The applicant had not submitted any evidence of financial hardship at or before the case management hearing.
6. The tribunal advised the applicant that they required to be satisfied on the question of financial hardship before they would be in a position to allow the application to be amended. They asked the applicant to explain what financial hardship required her to sell the property.
7. The applicant advised that the cost of living crisis had had an effect on her, with prices going up, this affected her. She advised that the mortgage payments on the property were going up. She advised that they had increased by about £100 a month over the last year. She advised that the mortgage was around £34,000. She said she thought that the mortgage monthly payments were now around £380 a month. She had 15 years left to pay on the mortgage.
8. She said she and her husband thought it would now be easier if they sold the property.
9. She said that there were also rent arrears, she said the rent was £450 per month. She receives universal credit of £414 per month. The tenant needs to pay for the shortfall in rent but does not do so. She said that the arrears are about £432.00 in total.
10. She said that she has had to make cutbacks in her living expenses. She said it was causing her stress. She advised that she had not sought any advice or financial assistance in terms of her financial situation.
11. It was noted that the mortgage was less than the universal credit payment being received, and the tribunal queried how there was financial hardship in these circumstances, she advised that she still had to pay for landlord insurance, and landlord registration.

12. She was asked if there were any other significant changes to her financial situation, she advised generally all costs were going up. She did not provide any further specification.
13. The tribunal advised that it was difficult to ascertain from her what the financial hardship was. The applicant advised that she accepted this and indicated that she wished to proceed under ground 1 only.
14. In terms of her application, she had lodged a tenancy agreement, and a letter from the estate agents about a desktop valuation for the property and advising that they would be able to provide a better valuation and obtain a home report when the tenant had vacated the property.
15. There was a discussion about the date in the notice to leave, as it had been signed and dated on the date that the application was made. The applicant advised that she had sent the notice to leave to the tenant on 9 January 2023. She had to give three months' notice and 9 April 2023 was the first date she could raise the action. She advised that she thought this was the date that she had to insert in the notice to leave after her signature.
16. She advised that the agents were going to sell the property for her. She said that she intended to sell the property once the property was vacant.
17. She was asked why it would be reasonable to grant the order, she advised that she and her husband had some issues in their marriage, which they are working through, but if it did not work out, then they may separate. She advised if her marriage breaks down, she may have to sell, she was questioned further on this statement, and she advised that she does intend to sell the property and it was not conditional on her marriage coming to an end.
18. She advised that she rents out no other properties. She advised that this property was bought as a buy-to-let 15 years ago. She advised it was jointly owned with her husband. She advised that they both work, she owns a laundrette and her husband is an engineer. They have no dependents whom they support.
19. She advised that the tenant resides in the property with her two children, a boy and a girl of 10 and 8 years. She had tried to discuss the shortfall payments with the tenant, but the tenant advised her that she keeps forgetting to pay it. She does not work and is on benefits. She advised that she was unaware of any vulnerability matters affecting the tenant and her family.
20. She was asked if she was aware if the tenant had sought other accommodation when the notice to leave was served on her. She said the tenant had approached the council for a house. She advised that to date she had not been successful. She was advised that until she was made homeless there was nothing that the council could do.
21. She advised that she believed that the tenant would prefer to get a house from the council. Due to the ages of her children, she wanted to get a larger property

so that the children could have a room each. The property has only two bedrooms. Her son and daughter share a room and they are getting bigger.

22. She advised that she does not speak to the tenant that often, the last time was about 2 months ago.
23. She advised that the tenant also has a dog and cat in the property which is in breach of the tenancy condition about pets. She had been told she was not allowed pets, they are still at the property.

Findings in Fact

24. The Tribunal found the following facts established: -
25. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 March 2021.
26. The tenant was Louise Walker.
27. The landlord is Catherine Booth and Mark Booth.
28. The property was 3 Castlehill Quadrant, Dumbarton.
29. There was submitted a notice to leave erroneously dated 9 April 2023, stating that an application would not be made until 9 April 2023. It sought eviction under ground 1 intention to sell. It should have been dated 9 January 2023 as this was when it had been posted.
30. The notice to leave had been sent to the tenant by recorded delivery. There was evidence of service on 12 January 2023 (delivery date). We find that it was sent on 9 January 2023.
31. There was a letter from an estate agent dated 15 May 2023 advising the applicant of the valuation of the property and, that once the tenant vacated, they could give an accurate valuation and instruct a home report.
32. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

Reasons for Decision

33. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.

34. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms: -

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 **[F1 may]** find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, **F2...**

(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 **[F3, 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.

35. The applicant appeared. The respondent did not appear. The applicant confirmed that she sought an order for eviction based on the fact that she intended to sell the property.

36. Turning to whether Ground 1 was met. It appeared that the first part of the ground 1 was met. The applicant was entitled to sell the property. It appeared that she intended to sell, as she had advised that it was her intention to do so and she had produced a letter from estate agents saying that they would be able to provide a more accurate valuation and a home report once the tenant had vacated the property. We are prepared to accept her oral evidence that she intended to sell the property.

37. The tribunal therefore required to proceed to consider if it would be reasonable to grant the order. We took into account that the applicant advised that the tenant would not pay the shortfall in her rent. This was a factor in favour of granting the order. We also took into account that the tenant had two children in the house. This was a factor which on the face of it did not support granting the order. Other than the shortfall in rent, (and we note that she is on benefits), and keeping a cat and a dog in the house, it did not appear that there were any difficulties in the tenancy.

38. We did not place weight on the marital situation of the applicant as it did not make sense to us why that matter was relevant, as the relevant facts at the date of the decision were that the couple were trying to work through their marriage

issues. The applicant's position was together or separated the couple wished to sell the property. There appeared to be no obvious financial issues which affected the applicant which should be taken into account in relation to whether it was reasonable to grant the order.

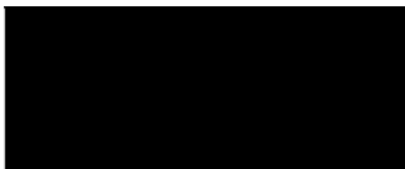
39. What we placed the most weight on was the fact that the applicant said that it was a two-bedroom property and the tenant would prefer to obtain a larger property from the council, given that she had two children, a boy and girl who were getting older, and they were currently sharing a bedroom.
40. In terms of reasonableness, we place weight on the fact that the tenant would like to obtain a larger property for her family, an order for eviction may assist her in her discussions with the council, and for that reason we find it would be reasonable to grant the order.
41. Considering the papers before us and the oral submission by the applicant, the tribunal is prepared to grant the order for recovery of possession, given that the first part of ground 1 was met and it appeared to us to be reasonable to grant the order.

Decision

42. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.



Legal Member/Chair

6th October 2023

Date