



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/23/1415

Re: Property at 5 Redheugh Avenue, Kilbirnie, KA25 7JL (“the Property”)

Parties:

Mr Phillip Gregory Spencer, Ash House, Peters Marland, Torrington, EX38 8QB (“the Applicant”)

Mr Paul Neilson and Mrs Suzanne Neilson, both 5 Redheugh Avenue, Kilbirnie, KA25 7JL (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.

Background

By application dated 2 May 2023, amended on 9 June 2023, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 1 of Schedule 3 to the Act, namely that the landlord intends to sell the Property.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 16 December 2019 at a rent of £950 per month, and a Notice to Leave dated 24 August 2022, stating that Ground 1 was the reason for the Applicant seeking an Eviction Order and that an application to the Tribunal would not be made before 18 November 2022. The Applicant also provided a copy of an Estate Agents’ letter of 16 August 2022, confirming that they will instruct a Home Report as soon as the Respondent vacates the Property.

The Applicant also provided a timeline of events leading up to the application. On 16 July 2021. He had informed his letting agents that, due to personal circumstances having changed, he needed to seriously consider selling the Property. When they

took on the tenancy, the Respondents had indicated that they would be interested in buying it in the future and, on 23 July 2021, the Applicant discussed a selling price with the agents. The Respondents were keen to pursue the opportunity and discussions continued until April 2023. The Respondents had difficulty in raising the deposit and had been unable to confirm that they had obtained a suitable mortgage offer. The Applicant's previous agents had served a Notice to Leave in January 2022, but it had been invalid and a new Notice to Leave was served in August 2022. The Respondents were still at that time hoping to be able to purchase the Property and, as a goodwill gesture, in November 2022, the Applicant had allowed them to remain in the Property for a further period without progressing to a Tribunal application. By April 2023, however, the Applicant felt that he had no alternative but to make the application to the Tribunal.

On 27 July 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 17 August 2023. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 24 August 2023. The Applicant was represented by Miss Samantha Hughes of Kilglen Property Management, Greenock. The Respondents were both present.

The Applicant's representative told the Tribunal that the Applicant is now retired and that he had decided he did not want to remain involved in the property letting market and wished to sell up. He had not taken the decision to apply for an Eviction Order lightly, as the Respondents had been good tenants, but they had known for some time that he wished to sell. He had held off, hoping to sell to the Respondents, but that had not worked out.

The Respondents told the Tribunal that they live in the Property with their 4 children, aged 18, 16, 15 and 12. Their eldest son has left school and has started an apprenticeship in Glasgow. Both Respondents work, Mr Neilson away from home and Mrs Neilson from home. They estimate that the rent for a private let would now be over £2,000 per month. They had offered to pay an increased rent, but that offer had not been accepted by the Applicant. They had been in touch with the local authority, Shelter Scotland and Citizens Advice, but the local authority had told them they have no housing stock and they have nowhere else to go. Their bank had told them they would need to find a deposit of £30,000, but, in the present financial climate, they were unable to raise that amount, so were not in a position to purchase the Property.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal was satisfied that the Applicant intends to sell the Property and that the Respondents have been aware of his intentions since July 2021. Since then, the Applicant has demonstrated a willingness to sell to the Respondents, but, whilst all Parties have acted in good faith, the Respondents have been unable to secure the necessary finance. The Tribunal noted that the Respondents have sought advice and help from the local authority and from Shelter Scotland and Citizens Advice and appreciated the impact that losing their home would have on the family but, having taken into account all the circumstances of the case, the Tribunal decided on balance that it would be reasonable to issue an Eviction Order under Ground 1 of Schedule 3 to the Act.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 applies to the Tribunal's Decision, as the application was not made before 28 October 2022, the date on which that Act came into force. This means that the Order cannot be enforced for six months, unless Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 expires or is suspended by the Scottish Government. This period will, the Tribunal hopes, provide the Respondents with sufficient time to secure alternative accommodation.

The Tribunal's Decision was unanimous.

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.

George Clark

Legal Member/Chair

Date: 24 August 2023