



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/1442

Property at 53 Kersehill Crescent, Falkirk, FK2 9GH (“the Property”)

Parties:

Miss Lynsey Higgins, 54 Polmont Park, Polmont, Falkirk, FK2 0XU (“the Applicant”)

Miss Suzanne McPhee, Mr Darren Tetsill, 53 Kersehill Crescent, Falkirk, FK2 9GH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy Agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and contract with a selling agent. The Applicant also lodged an email from a financial advisor and a trace report from a Sheriff Officer regarding the second Respondent’s current address. The application is based on grounds 1A and 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property to alleviate financial hardship and the landlord intends to sell.

2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 4 October 2023 at 10am, and they were required to participate. Prior to the CMD, the Applicant’s representative lodged further documents and submissions.
3. The CMD took place on 4 October 2023. The Applicant participated for part of the CMD and was represented by Mrs McAteer. The Respondents did not participate and did not contact the Tribunal prior to the CMD.

Case Management Discussion

4. The Tribunal noted that Ms McPhee had told the letting agent in May 2023 that Mr Tetsill was no longer living at the property. Mrs McAteer referred the Tribunal to the trace report, which confirmed that he is still linked to the address and to no other addresses. She also stated that a neighbour recently confirmed that he has been seen at the property on a daily basis and that the family had been on holiday together. Furthermore, at a recent inspection of the property, her colleague noted that Mr Tetsill’s belongings are still in the property. The Tribunal noted that the Sheriff Officers had successfully served the application on both Respondents at the property and that there is sufficient evidence to establish that both are still resident there.
5. Mrs McAteer told the Tribunal that, although the Notice to leave had been served on ground 1, the Applicant seeks an eviction order on ground 1A as she is experiencing financial hardship and needs to sell the property to address this. She confirmed that if the Tribunal is not persuaded to grant the order on ground 1A, that the order is sought on ground 1.
6. Ms Higgins told the Tribunal that she intends to sell the property as soon as she recovers possession of it. The property is valued at about £165,000 and there is a mortgage of £112,000. When the house is sold and the mortgage repaid, she intends to use the proceeds to clear her other debts and sort out her financial difficulties. Recently, she had to change her job. She had been working in Perth but the travel costs became prohibitive. She has secured a job closer to home. In response to questions from the Tribunal, Ms Higgins confirmed that her financial position was precarious even before the tenants stopped paying rent. Her mortgage had gone on to a variable rate and had increased substantially. As a result of the tenants failing to pay rent since March 2023, her income is much less than her outgoings, which include the mortgage for the property. Ms Higgins left the conference call at 10.30 because of work commitments.
7. In response to questions from the Tribunal, Ms McAteer told the Tribunal that the Applicant purchased the property in 2020 and lived there for a period. When

she moved in with her partner, she decided to let it out to cover the mortgage and generate some additional income. Her partner was previously in employment but is now a student. As a result, his income has reduced. The couple are young and have no dependants. The Applicant has been very stressed by the failure by the tenants to pay rent and the impact on her financial position. Her mental health is affected.

8. The Tribunal asked for some information about the Respondents and noted that some emails from Ms McPhee had been lodged. The letting agent received these in April and May 2023. Ms McAteer said that the Respondents reside at the property with three children who were aged 14, 13 and 9 at the start of the tenancy in February 2022. The property has three bedrooms. The Respondents were given permission for one dog but now have two in the property. Neighbours have expressed concern about this and the condition of the garden. The condition of the property, both inside and out, is very poor. Inspections were carried out in June 2023 and again recently. Ms McAteer referred to some photographs that she lodged which were taken at the recent inspection. The tenants paid their rent until the Notice to leave was served. No payments have been made since 1 March 2023. When contacted, Ms McPhee said that Mr Tetsill was no longer living there and that she was off sick. However, from the information available, it appears that he continues to reside at the property and that the family recently went on holiday and have recently purchased a new car. Furthermore, Ms McPhee works for a Local Authority and is therefore paid when on sick leave. There are no known health issues or disabilities affecting the household although Ms McPhee stated in an email that she has mental health issues. The rent arrears currently stand at £5600. In response to further questions, Ms McAteer said that she does not know whether there is an entitlement to benefits. She has applied for rent to be paid direct by UC on two occasions but these were refused. She has also contacted the Local Authority to see if the Respondents have applied for housing. She was told that they have not. Ms McPhee claims that she has applied to the Council for re-housing.

Findings in Fact

9. The Applicant is the owner and Landlord of the property.
10. The Respondents are the tenant of the property in terms of a private residential tenancy agreement.
11. The Applicant is entitled to sell the property.
12. The Applicant intends to market the property for sale when it becomes vacant.
13. The Applicant has suffered financial hardship as a result of increased mortgage interest, debts and the failure by the Respondents to pay rent since March 2023.

14. The Applicant intends to sell the property to alleviate financial hardship by repaying the mortgage over the property and her debts.
15. The Applicant is in employment and resides with her partner, who is a student.
16. The Applicant's monthly outgoings exceed her income.
17. The Respondents reside at the property with three children.
18. The Respondents have failed to care for the property, which is in poor condition. They have two dogs at the property although the Applicant only gave permission for one dog.
19. The Respondents have incurred rent arrears of £5600

Reasons for Decision

20. The application to the Tribunal was submitted with a Notice to Leave dated 4 January 2023 together with an email to the Respondents, which establishes that the Notice was sent on the same date. The Notice to leave states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 1 April 2023. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
21. Section 52(5) of the 2016 Act states, "The Tribunal may not consider whether an eviction ground applies unless it is a ground which - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought."
22. The Tribunal notes that the Notice to leave lodged with the application only refers to ground 1, and not ground 1A. However, in the application form and associated paperwork, the Applicant makes a request for the Tribunal to consider ground 1A because of the financial hardship she has experienced since the Notice to leave was served. The Tribunal notes that the Respondent has not participated in the Tribunal process or objected to the Tribunal considering ground 1A. Furthermore, it is understood that the financial hardship has arisen, in part, because of the Respondent's failure to pay rent. The Tribunal is satisfied that it would be reasonable to allow ground 1A to be included in the application. The Tribunal also notes that the Applicant only seeks an order in terms of ground 1, if the Tribunal determines that the eviction order cannot be granted on ground 1A

23. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 1A of Schedule 3 states, “(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship. (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if (a) the landlord – (i) is entitled to sell the let property, (*ii)) is suffering financial hardship, and (iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (b) the Tribunal is satisfied that it is reasonable to issue an eviction order ”
24. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell it. From the documents submitted with the application, and the information provided by the Applicant at the CMD, the Tribunal is also satisfied that the Applicant intends to market the property for sale when it becomes vacant. She has instructed a selling agent to market the property on her behalf.
25. Prior to the CMD, the Applicant submitted a number of documents to support the claim of financial hardship. These included the following;-
- (a) An email from a financial advisor stating that she has experienced financial hardship due to non-payment of rent by her tenant.
 - (b) A schedule of income and outgoings
 - (c) A list of liabilities, including loans and overdrafts, totalling £19,392
 - (d) Bank statements in relation to accounts with Monzo, Nationwide and Bank of Scotland – all overdrawn.
 - (e) Personal loan and credit card correspondence indicating that payments have been missed.
 - (f) Mortgage statement showing payments increasing from £472 in January 2022 to £805 in September 2023
 - (g) A rent statement showing arrears of rent as at 1 July 2023 of £3200
26. During the CMD, the Tribunal was told that, due to increased mortgage payments, the Applicant was struggling financially even before the Respondents stopped paying rent. Because of the rent arrears, she has missed loan payments and cannot contribute to the rent paid by her partner for their current accommodation. She intends to sell the property, pay off her debts and put her finances in order. The Tribunal is satisfied that the Applicant has established that she intends to sell the let property to alleviate her financial hardship.
27. The Tribunal is also satisfied that it would be reasonable to grant the application for the following reasons
- (a) The Respondents have failed to pay rent for several months. They currently owe the sum of £5600. This failure has caused or at least materially contributed to the Applicant’s financial problems.

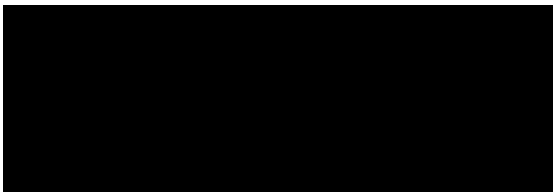
- (b) The Applicant is not a commercial landlord. The property is her sole property and was formerly her home. She requires to sell it to alleviate her financial problems.
 - (c) The Respondents have not offered any reasonable explanation for non payment of rent. It is significant that rent was paid in full until the Notice to leave was served.
 - (d) The Respondents are understood to be in work and neighbouring resident has told the Applicant that they have been on holiday and have purchased a car. There is no evidence of financial difficulties on their part.
 - (e) The Respondents did not provide any information about their circumstances, although they had the opportunity to do so. It is understood that there are three school age children in the property but no information is available about the impact of eviction on the household.
 - (f) The property has been poorly maintained by the Respondents
28. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.
29. As the Tribunal has granted an order in terms of Ground 1A, they do not require to consider ground 1.

Decision

30. The Tribunal determines that an eviction order should be granted against the Respondents.

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.



4 October 2023