



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/22/2577

Re: Property at Wellbank Cottage, Gullane, EH31 2AT (“the Property”)

Parties:

Bryce Houstoun Property LTD, 5 Stenhousemill Wynd, Edinburgh, EH11 3XX (“the Applicant”)

Ms Susan Macauley, Wellbank Cottage, Gullane, EH31 2AT (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

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, rent arrears and for eviction and recovery of possession on Grounds 1 and 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 28 July 2022;
2. PRTA commencing 26 September 2019;
3. Notice to Leave dated 18 December 2021;
4. Section 11 Notice;
5. Affidavit of Rosemary Houston dated 26 July 2021;
6. Written Representations from the Respondent dated 12 October 2022;
7. Written Representations from Applicant dated 24 October 2022;
8. Direction and CMD Note dated 1 November 2022;

9. Applicant's 3 Inventories of Productions;
10. Hearing Notification by email and letter to the Respondent dated 20 December 2022.

Hearing

The case called for a Hearing by conference call on 17 February 2023. The Applicant participated and were represented by their solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but she did not.

The Tribunal were satisfied that the Respondent had received notification of the Hearing and that the notification also advised the Respondent that she should attend.

The Tribunal accordingly proceeded with the Hearing.

The Tribunal heard from the Applicant's solicitor who spoke to the Grounds relied upon under reference to the documentary evidence contained within the 3 Inventories that had been lodged in advance of the Hearing. The Tribunal accepted these documents as read in the proceedings.

The Applicant's solicitor addressed the issue of reasonableness, referred to the Applicant's disposal of all other Properties in Gullane and wish to focus on their Edinburgh Properties. The Respondent's arrears had also increased considerably and now stood at £11,866. Despite having been ordered to provide information in support of her purported defence and/or the issue of reasonableness by the Tribunal she had not done so.

In the circumstances it was submitted that it was reasonable to grant the order sought.

Having heard from the Applicant the Tribunal had regard to the terms of Ground 1 and 12:

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.

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

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

1. The Parties let the subjects under a PRTA commencing 26 September 2019;
2. The Applicant is the owner of the Property and intends to sell it or at least put it up for sale within 3 months of the Respondent ceasing to occupy it;
3. The monthly rent was £1295;
4. Notice to Leave had been served on the Respondent;
5. Section 11 notification had been served on the local authority;
6. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
7. As at the date of the Hearing the Respondent was in arrears of rent in the sum of £11,866;
8. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
9. 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. The Tribunal determined that it would be reasonable to grant the order.

The Tribunal was satisfied that Grounds 1 and 12 had been established and accordingly granted the application for eviction and recovery of possession.

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.

17 February 2023

Legal Member/Chair

Date