



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

Chamber Ref: FTS/HPC/EV/22/0473

Re: Property at 10B Also known as G/2 Cardross Street, Dundee, DD4 9AA (“the Property”)

Parties:

Mr Michael Grossi, 16 Meadowbank Gardens, Broughty Ferry, DD5 3PW (“the Applicant”)

Mr Dean McLaren, 10B Also know as G/2 Cardross Street, Dundee, DD4 9AA (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order for recovery of possession should be granted in favour of the applicant against the respondent. The tribunal delayed execution of the order until 31 August 2022.

Background

1. An application was received from the applicant’s representative, Rentlocally Tayside & Fife, on 17 February 2022 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Paper apart setting out in more detail the applicant’s submission in relation to the grounds on which an order was sought.

- (ii) Copy Private Residential Tenancy Agreement between the parties which commenced on 20 November 2020.
 - (iii) Copy notice to leave dated 11 August 2021, citing ground 1, and stating the date before which proceedings could not be raised to be 14 February 2022.
 - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to Dundee City Council on 16 February 2022.
 - (v) Copy letter from Thorntons solicitors dated 17 February 2022, enclosing their marketing proposal in relation to the property.
3. Further to a request from the tribunal administration, an email was received from the applicant's representative on 3 March 2022, enclosing a letter of the same date from Mrs Helen Grossi, the joint owner of the property. In this letter Mrs Grossi confirmed that she gave authority for the application to proceed solely in the name of her husband, Mr Michael Grossi.
 4. The application was accepted on 18 March 2022. Notice of the case management discussion (CMD) scheduled for 25 May 2022, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 11 April 2022.
 5. The tribunal issued a direction to the applicant on 25 April 2022, requiring him to provide to the tribunal by 18 May 2022:
 - 1) Any further evidence tending to show that he intends to sell the property or at least put it up for sale within 3 months of the respondent ceasing to occupy it, such as:
 - a) A home report relating to the property.
 - b) A letter of engagement or terms of business from a solicitor or estate agent in relation to the intended sale of the property.
 - 2) Further details of the reasons why the applicant intends to sell the property.
 6. A response with attachments was received from the applicant's representative on 10 May 2022.
 7. No written representations were received from the respondent prior to the CMD.
 8. Further written representations were received from the applicant's representative on 23 May 2022.

The Case Management Discussion

9. A CMD was held by teleconference call on 25 May 2022. The applicant was represented by Mr Paul Goodman, Director of Rentlocally Tayside & Fife. The

respondent was present on the call and was represented by Mrs Joyce Horsman, Principal Solicitor at Dundee Law Centre. He was also accompanied by a supporter, Mr Glen Robertson, who did not otherwise take part in the CMD.

10. The tribunal observed that it had not been notified in advance that Mrs Horsman would be representing the respondent at the CMD, as required in terms of rule 10(1) of the 2017 rules. Mrs Horsman told the tribunal that she had been representing the respondent for some time in relation to various matters. She said that she had thought the tribunal had been notified that she would be representing him. Mr Goodman indicated that he had no objection to Mrs Horsman representing the respondent. The tribunal considered that it would be in the interests of justice to proceed with Mrs Horsman representing the respondent.
11. The tribunal chairperson noted that the application was made under ground 1 only, which was that the landlord intends to sell the property. The information which had been received from the applicant's representative on 23 May 2022, which related to rent arrears apparently owed by the respondent, was not therefore relevant to the application. Mr Goodman accepted that this was the case.
12. Firstly, the tribunal chairperson asked Mrs Horsman to confirm whether the respondent considered that the notice to leave had been validly served in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). She confirmed that this was accepted by the respondent.
13. The tribunal outlined the terms of ground 1 as set out in Schedule 3 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020), which states:

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, and

(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.

14. With regard to paragraph 2 (1) (a) of ground 1, the tribunal noted that the property was jointly owned by the applicant and Mrs Grossi. He was therefore entitled to sell the property. This was not disputed by the respondent.
15. The tribunal went on to consider the evidence before it in relation to the applicant's intention to sell the property. It noted that the primary evidence which had been provided by the applicant was the letter from Thorntons solicitors dated 17 February 2022. A further copy of this had been produced by the applicant's representative on 10 May 2022. This copy had been signed and dated 8 April 2022 by both the applicant and Mrs Grossi at the bottom of each page.
16. Mr Goodman explained to the tribunal that the applicant and Mrs Grossi had originally intended to sell the property before the respondent moved into it. A mistake had been made by Rentlocally's property manager at that point. The applicant and his wife had been unaware that the previous tenant had vacated the property, and that it had been re-marketed for letting. At that time, it has been their intention that their son would move into the property.
17. During the CMD, Mr Goodman sent to the tribunal by email a scanned copy of an affidavit signed by the applicant on 18 March 2021. This stated that the applicant's solicitors had written to Rentlocally on 16 December 2020 advising them that he required vacant possession of the property as soon as possible for his son. It also stated that his son had sold his own property and was currently living with the applicant.
18. Mr Goodman confirmed that no formal paperwork had been signed with Thorntons relating to the proposed sale, and no home report had yet been instructed, as the respondent was still living in the property. He said, however, that the applicant had not spoken to any other solicitor or estate agent regarding the proposed sale. As demonstrated by the affidavit, which had been prepared by Thorntons, they were the applicant's long-standing solicitor.
19. Mrs Horsman told the tribunal that the respondent did not dispute the applicant's intention to sell the property. When the respondent had moved into the property, he had done so in good faith and had expected that he and his son would be settled there for some time. There had been a previous eviction application to the tribunal, where an evidential hearing had been fixed. The affidavit dated 18

March 2021 which was produced by Mr Goodman had been obtained in relation to that application. The respondent had challenged that application on reasonableness grounds, and the application was withdrawn on the day of the hearing.

20. She said that while an argument could be made that it would not be reasonable to grant an eviction order given the respondent's circumstances, the respondent did not wish to raise a defence on reasonableness grounds. The situation had now changed, as the respondent did not wish to remain in the property. The whole situation had been very stressful for the respondent, and he now wanted to move on to somewhere more permanent.
21. The respondent has significant physical and mental disabilities. He is a single parent with a 13 year old son, who has lived with him for several years and has no contact with his mother. His son attends a school in the local area. The respondent needs housing which meets very specific requirements given his health issues. Mrs Horsham said that she was actively discussing possible housing options with the local authority on his behalf. The respondent has also applied to RSLs across Dundee. He was content for his son to travel further to attend his current school if necessary. The respondent himself then told the tribunal in very clear terms that he did not wish to stay in the property.
22. Mrs Horsman said that she wanted the tribunal to be aware of the respondent's circumstances but observed that it was for the tribunal to make a decision as to whether it was reasonable to grant an eviction order. She asked the tribunal, if it was minded to make an eviction order, to delay execution of the order in terms of rule 16A of the 2017 rules, in order to allow more time for the respondent and his son to find suitable alternative accommodation. She indicated that, while it was not possible to be certain how long this would take, an additional four to six weeks should be sufficient.
23. Mr Goodman confirmed that the applicant wished to seek an eviction order but said that the applicant understood and was sympathetic to the respondent's situation. He indicated that the applicant would not object to a delay in execution were the tribunal to make an order.

Findings in Fact

24. The tribunal made the following findings in fact:

- The applicant owns the property jointly with his wife, Mrs Helen Grossi.
- The applicant is the registered landlord of the property, and Mrs Grossi is registered as a joint owner.
- There is a private residential tenancy in place between the parties, which commenced on 20 November 2020.

- The notice to leave dated 11 August 2021 was valid and had been correctly served on the respondent.
- The applicant intends to sell the property or put it up for sale within 3 months of the respondent ceasing to occupy it.
- The respondent lives in the property with his 13 year old son.

Reasons for decision

25. The facts of the case were agreed between the parties and were not disputed. The respondent had the benefit of legal representation at the CMD and had indicated his desire to find somewhere else to live. The tribunal therefore considered that it was in a position to make a decision on the application at the CMD. The tribunal considered that it was able to make sufficient findings to determine the case, and that to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision without a hearing in terms of rule 18 (1) of the 2017 rules.
26. The tribunal determined that the applicant had established that he owned the property and was therefore entitled to sell it. The documentation produced by the applicant's representative tended to show that the landlord had the intention to sell the property within 3 months of the respondent ceasing to occupy it. This was not disputed by the respondent.
27. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 1(2) (c) of schedule 3 of the 2016 Act. In doing so, it took into account all of the evidence before it and all of the circumstances of the case.
28. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal determined that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the respondent under section 51 and ground 1 in Schedule 3 of the 2016 Act.
29. The tribunal considered Mrs Horsman's request that the tribunal delay execution of the order. It noted that the applicant did not oppose this. In order to allow the respondent sufficient time to find suitable alternative accommodation for himself and his son, the tribunal ordered a delay in the execution of the order until 31 August 2022, in terms of rule 16A (d) of the 2017 rules.

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.

Sarah O'Neill

Legal Member/Chair

25 May 2022

Date