



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/22/1213

Re: Property at 8 Arran Drive, Airdrie, ML6 6NJ (“the Property”)

Parties:

Miss Lesley Christie, Woodcroft, Drumbathie Road, Airdrie, ML6 6EW (“the Applicant”)

Mrs Christine Montgomery, 8 Arran Drive, Airdrie, ML6 6NJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Dickson (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 Respondent.

Background

By application, received on 26 April 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 12 February 2019 at a rent of £550 per month, and a Notice to Leave, sent by email and by post, dated 12 October 2021, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 15 April 2022. The application papers also included copies of emails from the Applicant to Mr Stephen Kiernan of Premier Properties, Uddingston, dated 11 October 2021 and 26 April 2022, confirming her intention to sell the Property. In the latter email, she stated that she would instruct them to carry out marketing

proceedings and a Home Report once possession of the Property has been obtained.

On 29 August 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 September 2022. The Respondent 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 12 October 2022. The Applicant was represented by Mr Stephen Kiernan of Premier Properties, Uddingston, her letting agents. The Respondent was also present. The Tribunal asked the Applicant's letting agents what evidence they intended to lead to support the statement in the application that the Applicant intends to sell the Property and to set out for the Tribunal their argument as to why it would be reasonable to issue an Eviction Order. Mr Kiernan told the Tribunal that the Property is an old sandstone villa with three bedrooms and two public rooms. It requires considerable modernisation and upgrading, and the cost of that work could only be justified if the rent (currently £650 per month) was then very substantially increased to the level appropriate for a fully modernised property of its type. In discussions with the Respondent, it appeared that she would be unable to afford such a rent increase. Accordingly, the Applicant had decided that the best solution would be to obtain vacant possession and sell the Property and Mr Kiernan now held a Mandate from the Applicant instructing his firm to market the Property whenever it becomes vacant.

Mrs Montgomery told the Tribunal that she has no objection to an Eviction Order being issued. The Property needs a great deal of money spent on it and the rent that it would obtain after improvement was beyond her. She lives in the Property with her 26-year-old son, who has health issues, and she has been in regular contact with North Lanarkshire Council and Airdrie Housing Office and has been assured that she and her son will not be left homeless and will be re-housed together.

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, as the Applicant being represented and the Respondent present at the Case Management Discussion, it had before it all the information and documentation it required 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 must 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 requirements of Ground 12 in respect of service of the Notice to Leave had been complied with and that the Applicant's intention is to sell the Property. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of that fact. The Tribunal noted in particular the position of the Respondent, namely that she did not object to an Eviction Order being issued, as she would not be able to afford the rent if the Property is upgraded, and that she was confident that the local authority would re-house her and her son together. The Parties were agreed that a considerable amount of work was required to the Property and that the consequence would be a significant rent increase.

Having considered all the evidence, written and oral, before it, the Tribunal decided that it was reasonable to issue an Eviction Order.

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: George Clark

12 October 2022
Date