



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/22/2947

Re: Property at 11 Coulter Court, 9 Keppochill Road, Glasgow, G21 1SR (“the Property”)

Parties:

Nick Cowie, Home Lease Farm Hatherop, Cirencester, Gloucestershire, GL7 3NA (“the Applicant”)

Jacqueline Carnwath, 11 Coulter Court, 9 Keppochill Road, Glasgow, G21 1SR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 8 December 2021, though the Respondent had been resident at the Property for many years under earlier tenancy agreements, initially with the Applicant’s late father as landlord.
2. The application was dated 19 August 2022 and lodged with the Tribunal on that date. (The application is thus not subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*.)

3. The application relied upon a Notice to Leave dated 4 February 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by Sheriff Officers on 7 February 2022 (though the PRT specified that email service was agreed between the parties as the preferred mode of service). The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice repeated that the “landlord has advised that they wish to sell the property” and attached a copy of an email from him to his letting agents with that instruction. The Notice to Leave intimated that an application to the Tribunal would not be made before 8 August 2022.
4. The application papers included a copy of a letter from 1-4-Sale Estate Agents dated 10 February 2022 confirming that the Applicant has been in contact with them regarding sale of the Property once vacant possession is obtained. There was also lodged a further email with 1-2-Let Letting Agents (the Applicant’s letting agents and presumably an associated business to 1-4-Sale) of 4 April 2022 where 1-2-Let provided advice on a likely sale price once marketed. After the initial case management discussion of 18 January 2023, the Applicant provided the letting agent (by email) with a detailed explanation as to his reasons for wishing to sell, which email was then lodged. This email formed the bulk of the evidence for the Applicant at the Hearing. In short, the Applicant expressed a long standing desire to sell the Property and that there was now a wish to sell so as to raise funds after purchasing his own property in England, and a specific need to sell in early course so as to seek a repayment of the supplementary Stamp Duty he had incurred on his purchase in England (as it was technically a second home at the time of purchase, and a deadline for selling the Property and seeking reclaiming the supplementary Stamp Duty was to fall around September 2023).
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 19 August 2022 was included in the application papers.

The Hearing

6. The matter called for a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber at Glasgow Tribunals Centre on 8 June 2023 at 10:00. We were addressed by the Applicant’s agent, Lorraine Brennan, Office Manager of 1-2-Let (Letting & Sales) Ltd and by the Respondent. The Applicant was not in attendance. No other witnesses were called.
7. The Applicant’s agent confirmed that eviction was still sought, and Respondent confirmed that she was still looking for new accommodation. Though the Respondent appeared willing to vacate, she was not able to commit to a date earlier than “three to six months”. The Applicant’s agent confirmed that an eviction order in normal terms was sought, and we thus proceeded with the witness evidence.
8. The Respondent stated on a number of occasions during the Hearing that she was not feeling well. (She had sought a postponement due to her health a few

days prior, which we had declined for lack of a medical report.) She was offered breaks during the Hearing, but declined these. We thus heard the preliminary matters, witnesses, and submissions consecutively, taking just under an hour to conclude them. There was an adjournment of around 15 minutes before we delivered an oral version of this Decision.

9. Further to the matters discussed at the case management discussion, there was no defence extended on whether ground 1 was correctly made out or the competency of the notices. The Hearing was limited to considering reasonableness.
10. No motion was made by either party for expenses.

Lorraine Brennan

11. Ms Brennan gave evidence that she was the office manager of 1-2-Let and was seeking, on behalf of the Applicant, for him “to get his property back”. She said that this had been an issue prior to February 2022 (when the Notice to Leave was issued) but that it had particularly “been dragging on since then”. She stated – addressing the Respondent directly – that her agency had sought to assist the Respondent in finding a new property but the Respondent had insisted that none had been suitable, as that she insisted on living in the specific area of the Property. Ms Brennan said that conversations on this subject with the Respondent had occurred within the last couple of months.
12. Further Ms Brennan made reference to there having been rent arrears, with a couple of months when no rent had been paid. She confirmed that as at the date of the Hearing, arrears were now reduced to £413.66 (on a monthly rent of £400).
13. In regard to the email from the Applicant to her, lodged with the Tribunal on 16 February 2023, Ms Brennan adopted this as her principal evidence. Ms Brennan stated that she knew of no material change to the circumstances set out in the Applicant’s email which stated, as of 16 February 2023:
 - a. That the delay in sale was causing both “financial and emotional hardship” to him and his family.
 - b. That he inherited this property from his late father in 2009, with the Respondent already in occupation.
 - c. He did not increase rent to the current tenant.
 - d. Due to financial constraints with the cost of living, he has “made the decision to seek to sell the property to take pressure off our monthly mortgage payments, coupled with other factors” stated below.
 - e. He lives in Gloucester, England so relies on “1-2-Let” and the factor to take care of the property and the tenancy, but he has been contacted by them on many occasions regarding the Respondent including: “rent arrears, untidy conditions on the stairwell landing not allowing cleaners to perform their duties despite [the Applicant]... being charged for this [cost]; an alleged incident of a smashed window... that [he] was asked to pay for” and “furniture left in the parking area”.
 - f. He has been “looking to sell my property for around 4-5 years” as he had required to “move away from the tied family accommodation that was

- offered with [his] job in agriculture and get on the housing ladder” with his wife as their “mortgage availability was becoming limited, due to” them both being in their mid to late 40s.
- g. The Applicant’s preference was “to sell the [Property]... and use this equity towards our family home and put us in a viable situation for the future, instead we had to find a hefty deposit and get on the housing ladder as it was apparent with Covid rules and the tenant’s historic unwillingness to act on notice served we had no more time to waste”.
 - h. Due to being “unable to liquidate the asset value of the Property it was classed as a second home and I had to pay in excess of £8000 stamp duty, this was funds that would have reduced my mortgage arrears by way of more deposit”; and that (as of February 2023) he had “7 months left to sell the property or [the] stamp duty refund [period of] 3years will expire, [which] this will further exacerbate” his “financial situation with mortgage payments and the cost of living rising”.
 - i. The Applicant had not had any direct contact with the Respondent but was “always been mindful that she may be experiencing financial difficulties and have always declined the recommendations of my rental agents to increase the rent with market value due to the many times the rent has fallen into arrears”.
 - j. Despite he and his wife both working “full time in demanding roles involving long hours” he felt “the consideration I have given the tenant has not been reciprocated in the slightest”. He had “always agreed to recommended repair and maintenance with no issues, yet when it [came] to the subject of the tenant playing fair after this prolonged period of notice served, there was no response”.
 - k. Prior to the pandemic, he required to pursue rent arrears against the Respondent on several occasions.
 - l. Due to the length of time the eviction process has taken, the Applicant required to renew his Landlord’s registration at a further cost and time incurred.
 - m. His “mortgage has increased by £200 a month since January” 2023 and he was concerned about losing the “£8,000 stamp duty”.
 - n. The Applicant “simply [did] not want to own a rental property any longer due to the financial implications” explained above.
14. Ms Brennan (having consulted with the Respondent) confirmed that the Property was a two bedroom flat on the 3rd floor (so four floors up). She said that she knew of no reason that the Property was adapted or specifically suitable and necessary for the Respondent, who lived there with her partner and two children, aged 17 and 19.

The Respondent

15. The Respondent was clearly distraught but, with some gaps, gave detailed evidence as to the issues of reasonableness regarding her situation.
- a. She worked until four years ago when, after a period with pneumonia, her health deteriorated.
 - b. She suffers from chronic asthma, which she had as a child and returned in her 40s. (She was born in 1965.) It has exacerbated recently, with three

hospital admissions in the last year, including 5 nights a month ago when her oxygen levels had dropped. At present, she coughs and wheezes at night and is returning to her GP to discuss.

- c. She is on long-term steroids, the side-effects of which have caused a further health condition, osteopenia.
 - d. Her partner has COPD and retired early due to the condition. Her 19 year old daughter suffers from anxiety issues and OCD.
 - e. She has been looking for flats and is registered with NG Homes. She is also looking for private lets, and has viewed some. She has not yet found anything suitable though, until recently, her 17 year old son was at a local school. He has now left and is going to college, so she feels she can look at homes in a wider areas. Her older son did live nearby to the Property, however, and he did come over to help her.
 - f. She has not registered with the local authority's homeless unit, nor had she sought advice from their Housing Options team. She had not told NG Homes of her health issues, or the threat of eviction.
 - g. She accepted that "at the end of the day, it is his house" (that is, the Applicant's) and that "he wants to get it sold" but she did not think he should be able to throw her out of it, as it was also her home.
 - h. She was a quiet tenant who took good care of the Property and cleaned the back court.
 - i. She now struggled with the stairs, and required help from her children in bringing up her shopping. She and her partner slept on a sofa bed in the living room, so her children could each have a room. She regretted not moving out "10 years ago" and did wish to leave the Property, but did not wish to be evicted.
 - j. In regard to the delay in finding a new home, she had been trying but due to her health conditions she had not yet managed.
16. Regarding the factual issues, the Respondent accepted that – as stated in the application – that her daughter had emailed after the Notice to Leave to ask for a further six month extension (that is, to February 2023) to move out, and that this had now long passed without them yet moving out. The Respondent accepted most of what Ms Brennan had said, subject to the following points from the letter by the Applicant:
- a. She is on benefits, including PIP and Housing Benefit. Due to a period when she failed to renew her claims, she fell into arrears of over £1,000 but she did not realise that until Ms Brennan contacted her about the level of arrears. Since then, she has paid £100 per week, which is more affordable to her than £400 on the 1st of the month, but also means that she is paying off the arrears.
 - b. She did not block the common stairs, but in the winter occasionally left out her washing in the stairwell to dry.
 - c. She did not smash any window. It was a neighbour, whom was addicted to drugs, whom had done so. That neighbour had also attacked the Respondent and the Respondent required to seek an interdict against that neighbour in 2017.
 - d. She did not block any parking area, though she did have a sofa out near the bins for a period, awaiting collection by someone.

Findings in Fact

17. On 2 December 2021, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 8 December 2021 (“the Tenancy”).
18. On 4 February 2022, the Applicant’s letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
19. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 8 August 2022.
20. A copy of the Notice to Leave was served on the Respondent by Sheriff Officers for the Applicant on 7 February 2022.
21. After service of the Notice to Leave, the Respondent’s daughter (speaking for the Respondent) emailed the Applicant’s letting agent requesting an agreement that the Respondent be permitted a further six months to vacate. The Applicant declined to make such formal agreement.
22. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 Part 1 of the 2016 Act on or around 19 August 2022.
23. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on the Applicant’s behalf on 19 August 2022.
24. On or about 3 February 2022, the Applicant instructed 1-2-Let to market the Property, which instruction was passed to its associated estate agency business, 1-4-Sale.
25. The Applicant wishes to sell the Property in early course so as to discontinue being a landlord; to reclaim a second home supplementary Stamp Duty charge in England; and to use the funds for he and his family’s future financial security.
26. Should the Applicant not be in a position to sell the Property by September 2023, he will lose the opportunity to reclaim £8,000 in supplementary Stamp Duty already paid on his home purchase in England.
27. The Respondent lives with her partner, 19 year old daughter, and 17 year old son at the Property.
28. The Respondent and her partner have respiratory conditions. The Respondent’s daughter has anxiety issues.

29. The Property is not specially adapted for the use of the Respondent, her partner, nor any dependent.
30. The Property is not especially suitable for the Respondent, her partner, or any dependent, at least since Spring 2023 when the Respondent's son left the local school.
31. The Property, being a third floor two-bedroom flat, is generally unsuitable to the needs of the Respondent and her family, given its size and number of stairs to reach it.
32. The Respondent is in arrears of rent of £413.66 as at the date of the Hearing.
33. The Respondent has made some efforts to seek alternative accommodation but has not exhausted those efforts.

Reasons for Decision

34. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent. This was acknowledged at the initial case management discussion, when the issues for the Hearing were restricted to those of reasonableness.
35. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...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.*
36. The correspondence with 1-2-Let and from 1-4-Sale constitute evidence under paragraph (3)(a) and combined with the evidence from Ms Brennan (speaking to the details in the Applicant's email to her) we agreed that paragraphs (2)(a) and (b) were satisfied. Again, this was acknowledged at the initial case management discussion, when the issues for the Hearing were restricted to those of reasonableness.

37. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were reasonable and pressing. He had not chosen to have the Respondent as a tenant and no longer wished to be a landlord to the Property which was hundreds of miles away from him. There were general and specific financial pressures upon him, and a specific desire to try and sell by September 2023 so as to reclaim Stamp Duty.
38. There were substantial arguments against the reasonableness of eviction, all relating to the Respondent's health and those of her family members but none were related to her staying at the Property long term, which she accepted was not suitable for her. The reasonableness arguments were solely that she wished yet further time to leave voluntarily. If the Respondent had a reason to discount possible alternative accommodation earlier, due to her son's schooling, this was no longer relevant. She had now had 15 months' notice of the Applicant's desire to sell and over three months more time than the extension she had originally requested. In balancing the issues, we found that it was reasonable to evict. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
39. We were not minded to grant any additional suspension of the order to evict given the length of time since the Notice to Leave and the pressing issue regarding reclaiming the Stamp Duty. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time in normal terms.

Post-script

40. The Applicant's failure to provide material information, prior to the case management discussion, as to why he sought to sell meant that a continuation of some sort was necessary. We do not require to consider what the likely outcome would have been at the initial case management discussion had the information from the email of 16 February 2023 been available to the panel at the case management discussion, but it would have been competent for the Tribunal to have been satisfied to grant the order at that time had the circumstances and evidence been suitable.
41. Further, it was the Applicant's good fortune that there were few factual issues in his email that were disputed by the Respondent at the hearing (and none on points that we regarded as material considerations). Had they been more materially disputed, as he was not in attendance our findings in fact might have been significantly different and the order may not have been granted.
42. Parties appearing before the Tribunal cannot both complain of the time it takes for decisions to be made (as is the tone of much of the correspondence from the Applicant's agent within the application papers) yet fail to provide information proactively and co-operate fully. The Applicant has been granted the order sought by us despite the failings in his preparation and co-operation, but another outcome may have occurred had the Respondent's position in her evidence been different.

Decision

43. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act.

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


J Conn

8 June 2023

Legal Member/Chair

Date