



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/22/4441

Re: Property at 4/21 Drybrough Crescent, Edinburgh, EH16 4FD (“the Property”)

Parties:

Mel Gallagher, 15 The View, Woodpark, Ballinteer, Dublin 16 (“the Applicant”)

Rebecca Knox, Roger Graham Olton, 4/21 Drybrough Crescent, Edinburgh, EH16 4FD (“the Respondents”)

Tribunal Members:

Joel Conn (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

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 Respondents commencing on 16 October 2021.
2. The application was dated 16 December 2022 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 8 September 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondents by Sheriff Officers on 12 September 2022, all in accordance with the provisions of the PRT. 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 explained that the Applicant was not continuing as a landlord and had instructed estate agents. The Notice to Leave intimated that an application to the Tribunal would not be made before 6 December 2022.

4. The application papers included a copy of an agreement with Ballantynes Estate Agents on marketing of the Property, as well as a letter from Bank of Ireland describing arrears that the Applicant had on this and another secured property nearby and pressing the Applicant to sell his portfolio. The application papers explained that the Applicant was seeking to sell due to the need to repay his lending.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh Council on 16 December 2022 was included in the application papers.

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 31 May 2023 at 10:00. We were addressed by the Applicant’s agent, Kelly Gibson, Senior Property Manager, Ballantynes. The Applicant was further in attendance but did not make any submissions.
7. There was no appearance for the Respondents prior to us orally confirming our Decision during the CMD. Our clerk confirmed no contact had been made, and the Applicant’s agent stated that there had been no contact with her office. She said that recent emails to the First Respondent had recently bounced, but she could not tell whether the mailbox was full or the email account no longer functioning. In the circumstances we were satisfied to proceed without the Respondents’ appearance.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. She explained that the Applicant remained in arrears with Bank of Ireland and required to sell both his properties and leave the rental market. His other property was already being sold, but that the Applicant’s financial circumstances meant that he required to sell both properties so as to address the lending with Bank of Ireland.
9. The Applicant’s agent confirmed that the Applicant still sought eviction in normal terms and understood that eviction, if granted, may be suspended as long as a further six months in terms of the 2022 Act.
10. We asked the Applicant’s agent to address us further on reasonableness and she informed us of the following:
 - a. The Respondents did not have any dependents residing with them.
 - b. The Respondents were not believed to have any vulnerabilities or special needs.

- c. The Applicant knew of no special requirements of the Respondents in regard to residing at the Property (such as adaptations, or the location being particularly significant for any support organisation).
- d. There were no arrears outstanding.
- e. The Respondents were believed still to be residing at the Property.
- f. There had been a recent inspection and the Property was found to be in acceptable condition.
- g. The Applicant's agent's office had received no contact from anyone seeking references, so was unaware of any steps being taken by the Respondents to seek rehousing.

11. No motion was made for expenses.

Findings in Fact

- 12. On 13 and 14 October 2021, the Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 16 October 2021 ("the Tenancy").
- 13. On 8 September 2022, the Applicant's letting agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that the Applicant wished to sell the Property.
- 14. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 6 December 2022.
- 15. A copy of the Notice to Leave was served on each of the Respondents by Sheriff Officers for the Applicant on 12 September 2022.
- 16. Clause 4 of the Tenancy Agreement provided for notices to be served in various means including "hard copy by personal delivery or recorded delivery".
- 17. 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 16 December 2022.
- 18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh Council on the Applicant's behalf on 16 December 2022.
- 19. The Applicant formally instructed Ballantynes to market the Property on or about 8 November 2022.
- 20. The Applicant wishes to sell the Property in early course so as to discontinue being a landlord, and to repay secured lending.
- 21. On 21 April 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 31 May 2023 upon both the Respondents.

Reasons for Decision

22. 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 Respondents.
23. 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.*
24. The formal agreement dated 8 November 2022 constitutes evidence under paragraph (3)(a) and combined with the letter from Bank of Ireland and submissions by the Applicant's agent (on the Applicant's financial issues, and desire to discontinue being a landlord) we agreed that paragraphs (2)(a) and (b) were satisfied.
25. 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. The Tribunal's own property search confirmed a standard security over the Property, and it is understandable for a landlord to seek to discontinue being a landlord, and seek to repay lending in the current financial climate, but here there is also pressure from the lender for the Applicant to do so.
26. There was no argument against the reasonableness of eviction. As the Respondents failed timeously to attend the CMD we are unaware, when considering the application, of their personal circumstances beyond the information provided by the Applicant's agent. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
27. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent. In any case, the Respondents may have up to a further six months before being under threat of

eviction and, in all likelihood, have at least until the current expiry of the 2022 Act in September 2023.

28. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
- a. the day following the end of a period of 6 months beginning the date of our order (that is 31 May 2023); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Post-script

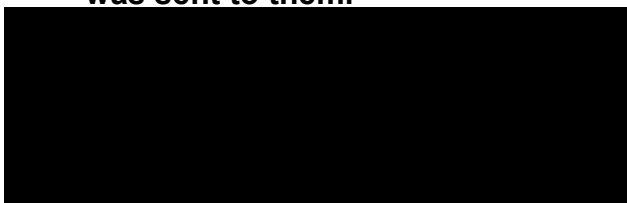
29. At around 10:25, shortly after we confirmed orally our Decision and while we were concluding the call, the Second Respondent dialled in. He explained that he thought the Respondents were supposed to have been called by the Tribunal, and apologised for mis-reading the intimation letter. When told the outcome of the CMD, he confirmed that the Respondents "knew it was coming" as they were aware that the Applicant had already sold the nearby property he owned. The Second Respondent said that the Respondents had a telephone assessment at 11:00 that day with the local authority's Homelessness unit and he gave no indication of wishing to defend the application. We were thus satisfied that the application was properly concluded and that it should be treated as a decision made in the absence of the Respondents.

Decision

30. In all the circumstances, we grant an order against the Respondents 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, suspended as stated above in terms of the 2022 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 them.



31 May 2023

Legal Member/Chair

Date