



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/22/3939

Re: Property at 18/2 DUBLIN STREET LANE SOUTH, EDINBURGH, EH1 3PX (“the Property”)

Parties:

Julie Hunter, 55 Bangor Road, Edinburgh, EH6 5JX (“the Applicant”)

Rachel Murray, 18/2 DUBLIN STREET LANE SOUTH, EDINBURGH, EH1 3PX (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted but that execution of the order should be postponed to 31 July 2023.

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to live in the Property and for eviction and recovery of possession on Ground 3 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 27 October 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 July 2020;
3. Notice to Leave dated 22 July 2022 and served by email of the same date;

4. Section 11 Notice to Local Authority;
5. Email to Local Authority serving Section 11 Notice;
6. Schedule of proposed refurbishment;
7. Written Representations from Respondent.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 19 April 2023. The Applicant did not participate but was represented by her letting agent. The Respondent participated and represented herself.

The Respondent did not seek to oppose the order for recovery of possession but due to her personal circumstances sought further time to obtain alternate accommodation. She had been in contact with a number of private sector landlords and letting agents in attempts to secure alternate accommodation without success.

The Respondent is a student and had final exams in May. She did not wish any order to become enforceable until she had secured alternate accommodation or at least until she had completed her exams. She did not want to return to the Property even if it were to be refurbished.

The Applicant's letting agent confirmed that the refurbishment works were extensive and would render the Property uninhabitable for a period of around a month. No option other than eviction had been discussed with the Respondent.

Decision and Reasons

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 3 which is in the following terms:

Landlord intends to refurbish

3(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

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

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,...

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) 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)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.

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

1. The Parties let the subjects under a PRTA commencing 1 July 2020;
2. The Applicant intends to refurbish the let property;
3. It would be impracticable for the Respondent to live in the Property during the refurbishment works;
4. Notice to Leave had been served on the Respondent on 22 July 2022;
5. Section 11 notification had been served on the local authority;
6. The Respondent is experiencing difficulties in sourcing alternate accommodation despite making all reasonable attempts to do so;
7. The grant of the eviction order would potentially occasion disruption to her final exams.

The Tribunal considered all of the evidence and submissions. The Ground for eviction was established and was not contested.

Reasonableness

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that the Applicant clearly needed the Property to refurbish and the Respondent could not live in it whilst it was undergoing refurbishment. The Tribunal were also satisfied that the Respondent was trying but having difficulties in sourcing alternate accommodation.

The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order but to postpone execution of the order to 31 July 2023 under Rule 16A of the Tribunal Procedure Rules. This would allow the Respondent further time to source alternate accommodation and to sit her final exams without disruption. The Tribunal did not require to hear any further evidence.

The Tribunal was satisfied that Ground 3 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.

Legal Member/Chair

19 April 2023

Date