



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/21/2014

Re: Property at 16 Stephens Drive, Inverkeithing, Fife, KY11 1DD ("the Property")

Parties:

Mr Gary Trebble, 23 Stephens Drive, Inverkeithing, Fife, KY11 1DD ("the Applicant")

Mr Andrew Buchanan, 16 Stephens Drive, Inverkeithing, Fife, KY11 1DD ("the Respondent")

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") grants an eviction order based on ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") and specifies the date on which the private residential tenancy is brought to an end as 25 August 2022. The decision was unanimous.

A: Background

[1] The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 16 August 2021. The Application was accepted by the Tribunal on 28 October 2021. An amendment to the application correcting the Respondent's name was granted on 29 October 2021.

[2] The following documents were lodged to support the application:

1. Copy Private Residential Tenancy (PRT) commencing 15 November 2020 for the property.
2. Notice to Leave dated 3 March 2021 with email confirmation of service dated the same day. of same and the envelope it was delivered in.
3. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 5 September 2021.
4. Safe Deposit Scotland Deposit Certificate.
5. Typed undated written statement by Christopher Trebble.
6. Handwritten statement by Mr Buchanan, the Respondent received on 24 November 2021.
7. Email requesting postponement by Applicant 16 February 2022.
8. Further email intimating witness details and 3 emails from Moo-Let to the Applicant dated 20 February 2022.

These are referred to for their terms and held to be incorporated herein.

A Case Management Discussion took place on 10 December 2021. The Case Management Notice is referred to for its terms.

The case was adjourned to a hearing, which took place on 25 February 2022 at 10 am by teleconference. Notification had been sent to both parties on 21 January 2022.

B The Hearing

Both parties attended the telephone conference. Evidence was heard from both parties and from Mr Christopher Trebble, the Applicant's son.

1. Evidence of Mr Gary Trebble:

Mr Trebble the Applicant stated that the property is a 3 bedroom semi detached house. He has engaged Moo Let to deal with the property management. According to Moo Let, the Respondent has not replied to recent correspondence, including the attempt to arrange an inspection and Moo Let had offered the Respondent a 3 bedroom property in Rosyth recently for first refusal although he appreciates that this was not in the location the Respondent was looking for and too far from the train. He did point out that it would be a 15 minute walk to Inverkeithing and there is a bus service. He also advised that the Respondent appears to work away sometimes. The process had now been going on for almost a year. The property is located in the same street he lives in. It was his parents' house and when his father had to go into residential care the house was rented out to finance the care fees. His father died in 2019 and he was the Executor. The property is now required for his son, who is currently occupying a 4 bedroom house in Dunfermline with his partner. The Applicant is trying to get the property so that his son can move in, buy it and thus reduce his living costs. He did not want to be a landlord; it was through his father dying he had to take on that role because the tenant was in the property because he had rented the property from the Applicant's father. He stated his son's situation changed in the spring of 2021. His son developed depression and the Applicant and his wife want to help their son by selling him the property and having him close by.

The Applicant stated he has sympathy with the situation of the Respondent and confirmed there were no problems with the tenancy and rent. It was just a change in situation. He stated the current situation could go on forever. Inverkeithing is a small place. The Applicant stated he would consider it reasonable to the Respondent to maybe consider a 2 bedroom property. His son would move into the property and then sell his house and it would be his long term home. His son feels his life is on hold while the situation goes on. If there was an order with a definite end date that would help. He thought 3-6 months would be reasonable.

2. Evidence of Mr Christopher Trebble

Mr Trebble stated that he used to be a self employed contractor but suffered mental health problems about 2 years ago, when he was off for a couple of weeks and ultimately had to give up this job and seek other employment. He is now working from home as a anti money laundering investigator. His partner had been working from home during the pandemic but now has to return to her workplace in Edinburgh. She does not drive. He does drive but now works from home and she can no longer car share with her, and he would not be able to drive her back and forth every day, thus Inverkeithing would be a good place to live due to the public transport links to Edinburgh. He lives in a 4 bedroom house where he has been for the last 4 or 5 years. It is about 15 minutes by car away from the property in question. He is now on a variable mortgage rate as he cannot enter into another fixed term mortgage because he and his partner intend to move into the property in 16 Stephens Drive. They would then be able to have a cheaper mortgage and arrange this over a longer period and thus significantly improve their financial situation. They currently have high mortgage payments. They had some unexpected expenses and their financial reserves have depleted. He had another mental health crisis in September/October 2020 and decided at that stage to move to Inverkeithing sooner rather than later and downsize and move closer to his parents for support. He feels very safe in the property at no 16 Stephens Drive. It was his second home as a child because his grandparents lived there when he grew up. His grandfather's wish was for his grandson to take on that property. When his grandfather became ill, they had to rent out the property to finance his care. They waited until after Christmas and New Year in 2020/2021 before they gave notice to the Respondent as they did appreciate his situation and his child care arrangements and the problems because of the lockdown. However, this had now gone on for over a year. Half his house had been packed up when the 3 months notice were up and then the Respondent stated he would not be moving out. Since then, Mr Trebble stated his life is on hold, his house no longer feels like a home. It has been ready to go on the market since June 2021. The cost of living has gone up. His energy supplier has gone bust and thus he expects a sharp rise in his utility bills for which he will have to borrow funds from his parents. The situation was putting a great strain on him and his parents. His outgoings would be about £400 per month less if he could move into the property. He would have the support of his mother in particular if she just lived across the street. They had all been spending time looking for alternative accommodation for the Respondent. They don't want to force someone to move out, but it is an awkward situation. It has a negative impact on his mental health. He now has problems sleeping. He had planned to get married once he had moved and this had now been postponed.

3. Evidence of Mr Andrew Buchanan:

The Respondent stated that he had sympathy for the Applicant and his son and that he understood their reasons for wanting him to move out. He would find that reasonable in principle but due to his special circumstances with childcare arrangements and the fact that he does not drive he really needs to be in Inverkeithing or somewhere near Inverkeithing/Aberdour or on that train line. He sold his business as a publican in 2020 and has now been employed as a publican for 5 months, having spent time before focusing on childcare. He has a son aged 7 in Aberdour and boy/girl twins aged 12 in Edinburgh from his previous relationships. He moved into the property specifically as it met his transport needs to carry out his childcare arrangements and work in Edinburgh. His son is with him 2 weeknights and on weekends and he usually has to do two school runs, pick him up from school and take him to drama class 1x per week. The train journey time is about 8 minutes. It would take 1.5 hours to walk. He sees his other children about 3 times in two weeks in Edinburgh and has them every other weekend. They are in secondary school. Because of their age he requires 3 bedrooms. He has looked for alternative accommodation and spoken to the Homelessness Officer of Fife Council and they would put him in temporary accommodation which might jeopardise his childcare arrangements. They did not mention the costs associated with temporary accommodation. He had consulted websites to find alternative accommodation but could not remember them specifically. He would have taken one of the Moo Let properties he was advised about but it was let within the hour. He thought they had promised him a property and then 4 days later they told him it had gone to someone else. Other properties were not suitable as they were not on that specific train line. He has no financial problems and has some further support from his mother. He now has 5 months pay slips and just recently started to consider purchasing a property. The market is very difficult for finding rental properties. He acknowledged the Applicant had been very patient. He stated he is a single parent and works full time. All he wants is a safe place for his children to grow up in. He thought he had found that when he rented the property. Then the pandemic started and he was asked to move out. He would need more time to find suitable accommodation. At present the Homeless Officer does not consider him homeless, that would change if there was an eviction order. A definite end date would certainly help the Applicant and his son. He has always looked after the property well and Moo Let did an inspection about 5 months ago.

C Findings in Fact

1. The parties are landlord and tenant of the property under a Private Residential Tenancy commencing 15 November 2020.
2. There have been no problems with the tenancy and the tenancy is ongoing.
3. The Applicant served a Notice to Leave on the Respondent on 3 March 2021 based on ground 4 of schedule 5 of the Act stating that a family member intends to live in the let property. The notice period expired on 16 June 2021.
- 3.4. The required notice to the Local Authority was served on 5 September 2021.
- 4.5. The Respondent has childcare arrangements in place for his 12 year old twins, (one boy one girl) who go to secondary school in Edinburgh and his 7 year old son who lives and goes to school in Aberdour, which are

manageable as long as he has access to good public transport on the train line that includes Inverkeithing and Aberdour.

~~5-6.~~ He is in employment as a publican in Edinburgh.

~~6-7.~~ Inverkeithing is ideally located for his transport needs, and he does not drive.

~~7-8.~~ He has tried to find alternative suitable accommodation for almost one year and has been in contact with the Homelessness Officer of Fife Council

~~8-9.~~ As he is currently not homeless the Council is currently not able to provide him with alternative accommodation.

~~9-10.~~ The Applicant's son wishes to move into the property, which was the house of the Applicant's parents.

~~10-11.~~ The Applicant's son is a qualifying relative in terms of ground 5 (5)(b) of the Act.

~~11-12.~~ The Applicant's son used to work in Edinburgh and car share with his partner but now works from home. His partner does not drive and now has to resume commuting to Edinburgh from their property in Dunfermline by public transport.

~~12-13.~~ The Applicant's son has encountered financial problems and has developed mental health problems.

~~13-14.~~ The Applicant's son would benefit from downsizing and would save around £400 per month if he moved into the property and sold the 4 bedroom property he currently occupies.

~~14-15.~~ The Applicant's family's long term plan had always been that the Applicant's son would move into the property.

~~15-16.~~ The Applicant's son intends to sell his house and occupy the property as his long term residence.

~~16-17.~~ The ongoing situation, which remains unresolved since March 2021, has had a negative impact on the Applicant's son and the whole family.

D Reasons for Decision

1. Relevant legislation:

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

schedule 3 ground 5 Family member intends to live in property

(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

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

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

- (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
- (3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—
- (a) the family member is incapable of having, or expressing, that intention, and
 - (b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.
- (4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—
- (a) in a qualifying relationship with the landlord,
 - (b) a qualifying relative of the landlord,
 - (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or
 - (d) in a qualifying relationship with a qualifying relative of the landlord.
- (5) For the purposes of sub-paragraph (4)—
- (a) two people are in a qualifying relationship with one another if they are—
 - (i) married to each other,
 - (ii) in a civil partnership with each other, or
 - (iii) living together as though they were married,
 - (b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,
 - (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,
 - (d) a person's stepchild is to be regarded as the person's child,
 - (e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.
- (7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

2. The Tribunal notes that the parties and the Applicant's son all understood the situation and concerns of the respective parties involved and that the facts of the case are essentially agreed between the parties. The formal requirements for an eviction order in terms of ground 5 of schedule 3 of the Act are also met and the issue the Tribunal had to decide is whether or not, as required by ground 5 (2) (b) of the Act, it is reasonable to grant an eviction order in the circumstances of the case. The Tribunal considered that in this case there were two sets of conflicting but valid and understandable interests, which had to be considered.

3. On the one hand, the Respondent has a valid interest to ensure that he lives in a property that will allow him to attend to his childcare and school run obligations and provide a suitable home for his 3 children. The property is ideal for that purpose, which is why he chose to rent it. The good public transport connections in Inverkeithing are of particular importance for him. He has so far not managed to obtain suitable alternative accommodation, although the Tribunal notes that he has not taken all possible steps to do so, such as advertising himself for a rental property. The Tribunal also notes that recently he has also considered the option of purchasing a property.

On the other hand, the Applicant had always envisaged his son to move into the property. This was also the intention and wish of the Applicant's deceased father. Ultimately the Applicant is the owner of the property and now wishes to exercise his ownership rights by providing a better living solution to his son. The family only

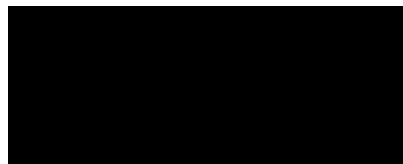
rented out the property to be able to finance the care of the Applicant's father and otherwise had no intention to act as landlord. The Applicant's son has a legitimate interest in downsizing and being closer to his family to have more support in times when his mental health declines. He requires to reduce his monthly outgoings. He has a strong and positive connection to the property and the Tribunal accepted that a move to the property would benefit his mental health. He clearly intends to use the property as his long term home with his partner, who would benefit from the public transport connections to her place of work. The protracted unresolved situation has had a negative impact on the Applicant's family and in particular the Applicant's son, who feels he cannot move on and take further steps to resolve his situation until it is clear if and when he can move into the property.

4 On balance and taking into account the interests and rights of both parties, the Tribunal considered that it would be reasonable in all the circumstances to grant the eviction order for the legitimate purpose of the Applicant's son moving into the property but only if a suitably lengthy additional period was provided to allow the Respondent to either find suitable alternative rental accommodation or a suitable property to purchase. The Tribunal recognises that the rental market in that area is buoyant, and that time is required for the Respondent to make appropriate arrangements. A final end date of the tenancy would provide the Applicant and his family with certainty and allow them to now take steps to arrange for the move. It would also enable the Respondent to access further assistance from the local authority as it would be clear that he would become homeless after that end date. The Tribunal considered that in the circumstances a period of 6 months should be allowed before the tenancy comes to an end and the eviction order then becomes enforceable.

5. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal in terms of S 52(4) specifies the date of the end of the tenancy as 25 August 2022.

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.



Petra Hennig McFatridge
Legal Member/Chair

25 February 2022
Date