



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/3361

Re: Property at 200 Upper Craigour, Edinburgh, EH17 7SH (“the Property”)

Parties:

Mr Abu S Ferdous Khan, 76 Score Lane, Liverpool, L16 5EB (“the Applicant”)

Mr Joseph Forbes Duncan Murray, 200 Upper Craigour, Edinburgh, EH17 7SH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order on grounds 3 and 4 of Schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, email to the Respondent with the notice to leave attached, post office certificate and track and trace report, section 11 notice, grant of planning permission, building warrant and statement from the Applicant were lodged in support of the application.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 23 February 2023 at 10am and that they were required to participate. They were provided with the telephone number and passcode.

3. The CMD took place on 23 February 2023 10am. Both parties participated.

Case Management Discussion

4. Mr Khan told the Tribunal that he is seeking an eviction order on grounds 3 and 4. He intends to return to reside at the property with his wife and 7 year old child who has autism. Their current rented accommodation is unsuitable for their needs and the property is the only one that he owns. He also intends to carry out the works specified in the building warrant and grant of planning permission, namely a large extension and an internal refurbishment. Planning permission was granted on 6 January 2020 and stipulated that the work had to start no later than 3 years after this date. He has been granted an extension but must start the work by 6 March 2023. It had been difficult to get a builder arranged. However, he and his family need to move back to the property as soon as possible and will have to reside at the property while the work is ongoing. Mr Khan said that the company he works for is based in Liverpool, but his job involves travelling throughout the UK and most of his work can be done from home. He will continue in this job when the family re-locates to Edinburgh.
5. Mr Murray told the Tribunal that he does not oppose the application. He confirmed that he had received the Notice to leave which was sent to him by email on 27 June 2022. He explained that he has three children aged 8, 13 and 10 months. The 13 year old and 10 month old reside with him on a full time basis and the 8 year stays with him at least 50% of the time. The house is currently too small for his needs. He had previously understood that he would be able to continue to reside in the property after the building work was complete. However, his children attend schools in Musselburgh and Wallyford. He has applied for housing from East Lothian Council as the commute to these schools is costly and time consuming. He has been advised that he will only be a priority for housing if an eviction order is granted. He is currently working as a window cleaner. There are no health issues affecting the family. Mr Murray told the Tribunal that he does not believe that the Applicant intends to move back to Edinburgh but has no evidence to support his view. He confirmed that the application is not opposed, for the reasons already provided. However, he seeks a delay in the enforcement of the eviction order because he does not know when he will be offered accommodation by the Council and must have somewhere to stay for the children.
6. Mr Khan told the Tribunal that he had never intended for the Respondent to reside in the property after the refurbishment. He stated that he objects to any additional time being granted as the building work must start by 6 March 2023, the Respondent has had plenty of notice, he has refused to allow the building materials to be delivered to the property and he has not paid rent for a period of 8 months. He owes over £8000. Mr Murray denied this, stating that he is lawfully withholding rent due to a failure to carry out essential repairs but that the sum outstanding is no more than 4 months' rent.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The Applicant intends to live at the property.
10. The Applicant intends to carry out work at the property which will include a two storey extension to the side of the property with new entrance porch and garage.
11. The Respondent resides at the property with two children. A third child stays at the property at least 50% of the time.
12. Two of the children attend school in East Lothian.
13. The property is not suitable for the Respondent's needs as it is currently too small and is not close to the schools attended by the children.
14. There are arrears of rent of at least £4000.
15. The Applicant resides in rented property which is not suitable for the needs of his family.
16. The grant of planning permission expired on 6 January 2023.

Reasons for Decision

17. The tenancy is a private residential tenancy which started on 7 January 2021. The application to the Tribunal was submitted with a Notice to leave and a copy of an email to the Respondent dated 27 June 2022. This establishes that the Notice was sent to the Respondent on this date. The Notice states that an application to the Tribunal is to be made on grounds 3 and 4, the landlord intends refurbish the let property and to live in the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 22 September 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
18. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 3 of Schedule 3 states "(1) It is an eviction ground

that the landlord intends to carry out significantly disruptive work to or in relation to the property. (2) The First-tier Tribunal may find that the eviction ground named in sub-paragraph 1 applies if – (a) the landlord intends to refurbish the let property... (b) the landlord is entitled to do so, (c) it would be impracticable for the tenant to continue to occupy the property given then nature of the refurbishment intended by the landlord and (d) the Tribunal is satisfied that it is reasonable to issue the eviction order on account of those facts.” Ground 4 of Schedule 3 states “(1) It is an eviction ground that the landlord 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) the landlord intends to occupy the let property as the landlords 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.”

19. The Tribunal noted that the Applicant had lodged both a grant of planning permission and a building warrant. The grant of planning permission is dated 6 January 2020, which predates the start of the tenancy. Although the tenancy is a private residential tenancy, the document lodged indicates that the parties agreed an end date of January 2022, although this was not enforceable. The grant of planning permission appears to establish that extensive works are planned to include a single and two storey extension. The building warrant is dated 8 June 2021. At the CMD, the Applicant confirmed that the works are still planned. It had been difficult to get a builder, due to the pandemic, but that is now arranged. An extension to the planning permission grant has been obtained as the work was supposed to start no later than 6 January 2023. The Tribunal is satisfied that the Applicant is entitled to carry out the work, that he intends to carry out the work and that the nature of the work is such that it be impracticable for the Respondent to continue to occupy the property while it is ongoing.
20. The Applicant submitted a written statement with the application which states that he intends to reside at the property. At the CMD, he told the Tribunal that this is the case and that his family urgently require to move from their current rented accommodation which does not meet their needs. Although he does not oppose the application, the Respondent said that he did not believe that the Applicant intends to live in the property, as his job is in Liverpool. However, he stated that he could not provide any evidence to support this view. The Applicant advised the Tribunal that his work involves travelling throughout the UK but that he mostly works from home and that he can continue in his current role and relocate to Edinburgh. Having regard to the fact that the Respondent was notified in June 2022 that the Applicant intends to reside in the property and taking into account the information provided by the Applicant at the CMD, the Tribunal is satisfied that the Applicant intends to reside at the let property for a period of at least 3 months.
21. The Tribunal proceeded to consider whether it would be reasonable to grant the order for eviction and noted the following: -
 - (a) The Respondent has discussed his housing situation with the Local Authority and expects to be offered accommodation in East Lothian. The property is not

suitable for his family's needs. It is too small and located some distance from the schools attended by his older children. The Tribunal also noted that the Respondent complains that essential repairs are required. While he has legal remedies if this is the case, the condition of the property is currently causing inconvenience.

- (b) The Respondent does not oppose the application and stated that he has to have an eviction order granted before he will be considered as a priority by the Local Authority.
- (c) The Applicant has obtained the necessary Council approval for work at the property which cannot start until the property is vacated.
- (d) The Applicant is currently living in rented property with his family, including a disabled child, and only owns the property which is the subject of the application. There is outstanding rent, although the Respondent disputes that this is owed because repairs are required.

22. Having regard to the factors specified in paragraph 21, the Tribunal is satisfied that it would be reasonable to grant the order.

23. The Respondent asked the Tribunal to consider ordering a delay in enforcement of the application in term of Rule 16A(d) of the 2017 Procedure Rules. He said that he does not know how long he will have to wait before a house will be offered by the Council and has to be able to provide his children with a home. The Applicant opposed this request. He referred to the arrears of rent and the fact that the Respondent was issued with the Notice to leave in June 2022. He also advised the Tribunal that his family need to move quickly and that the work at the property has to start no later than 6 March 2023, in terms of an extension to the grant of planning permission.

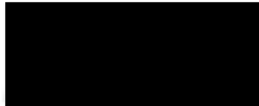
24. The Tribunal noted that the Applicant cannot recover possession of the property by 6 March 2023 unless the Respondent vacates voluntarily, as the eviction order will not be issued until after the 30 day appeal period. Furthermore, the Applicant did not provide reasons for his claim that he needed to move back to the property urgently, except for the time limit specified in the grant of planning permission. On the other hand, the Respondent has not yet been offered suitable alternative accommodation by the Local Authority and could become homeless. In the circumstances, the Tribunal is satisfied that some additional time should be granted. The Tribunal orders a delay in execution of the order until 28 April 2023

Decision

25. The Tribunal determines that an eviction order should be granted against the Respondent but that the order should not be executed until 28 April 2023.

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.



Josephine Bonnar, Legal Member

23 February 2023