



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/23/0528

Re: Property at 3 7 Brewery Close, South Queensferry, Edinburgh, EH30 9LN (“the Property”)

Parties:

Laura Rutherford, 9 Ashburnham Loan, South Queensferry, EH30 9LE (“the Applicant”)

James Martin, 3 7 Brewery Close, South Queensferry, Edinburgh, EH30 9LN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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 10 June 2021.
2. The application was dated 13 February 2023 and lodged with the Tribunal on 20 February 2023. 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 16 November 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by email on 16 November 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 wished to sell so as to purchase her own home and move out of rented accommodation, and that the Applicant’s agents (Rettie) were instructed to market. The Notice to Leave intimated that an application to the Tribunal would not be made before 11 February 2023.
4. The application papers included a copy of an agreement with Retties’ estate agency department on marketing of the Property. Shortly before the case management discussion (“CMD”) an affidavit was lodged from the Applicant but it stated little in addition in regard to the reasons for seeking to sell beyond what was already within the application papers.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh Council on 20 February 2023 was included in the application papers.

The Hearing

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 14 June 2023 at 10:00. We were addressed by the Applicant’s agent, Ashleigh Wilson, Portfolio Manager, Retties.
7. There was no appearance for the Respondent prior to 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 since 31 March 2023. On that date, the Respondent had discussed an intention to address arrears (which were the subject of a conjoined application under reference CV/23/1308) and that he was awaiting a response on two properties he had viewed. She said that recent contact to the Respondent had not been responded to, though an intimation of an inspection for 11 April 2023 had taken place, with the Respondent not in attendance but appearing to have cooperated with the request. In the circumstances we were satisfied to proceed without the Respondent’s appearance.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. She explained that the Applicant lived and worked in London, residing in rental accommodation. She wished to sell the Property so as to invest in a property in London for her own use. The Applicant’s current rental address in London was in the affidavit but the address on the application was her current correspondence address as landlord, being her parents’ address. The Applicant had become landlord of the Property following her parents transferring the Property to her in 2015. Prior to that, it had been owned by her parents as part of an investment towards supporting their children’s future plans.

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. We were given no information on any disabilities, vulnerabilities, or special requirements of the Respondent, nor of any adaptations to the Property. The Applicant's agent further informed us of the following:
 - a. She was unaware if the Respondent had any dependents residing with him. On inspecting the Property on 11 April 2023, one of the rooms had a single bed and there were some toys in the Property, but she had never been informed by the Respondent that he cared for a child overnight, either full time or part time. As far as the agents had been informed, the Respondent resided at the Property alone.
 - b. The Property was a two bedroom flat with a shared garden.
 - c. Arrears to date were £4,065. The Respondent had stopped making payments in January 2023, effectively paying up to the date that Tribunal proceedings could be raised (having arrears of only £5.75 as at 12 February 2023 (pro-rated)) and paying nothing since.
 - d. She believed the Respondent was self-employed. There had been irregular, but generally full, payment up to February 2023, and she attributed the irregular payments to irregular income from his employment.
 - e. The Respondent was believed still to be residing at the Property.
 - f. On the inspection of 11 April 2023, the Property was found to be in acceptable condition. There were flat-packed boxes in one room, as if in preparation for moving, but no other signs of an intention to vacate were detected by the agent.
 - g. The Applicant's agent's office had provided a reference so as to assist the Respondent with obtaining a new tenancy.
 - h. The rent remained at the same level as in the Tenancy Agreement.
 - i. The Applicant has engaged both a solicitor, and Retties' estate agency department, to advance a sale as soon as vacant possession is obtained as she has a genuine desire to sell, so as to invest in a property of her own.
11. No motion was made for expenses.

Findings in Fact

12. On 7 and 8 June 2021, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 10 June 2021 ("the Tenancy").
13. On 16 November 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.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 11 February 2023.

15. A copy of the Notice to Leave was served on the Respondent by email by the Applicant's letting agent on 16 November 2022.
16. Clause 4 of the Tenancy Agreement provided for notices to be served in various means including by email.
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 20 February 2023.
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 20 February 2023.
19. The Applicant formally instructed Retties to market the Property on or about 14 January 2023.
20. The Applicant wishes to sell the Property in early course so as to invest in a home for herself in London, where she works and is currently renting property.
21. The Respondent ceased paying rent for the Property in January 2023.
22. On 10 May 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 14 June 2023 upon both the Respondent.

Reasons for Decision

23. 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.
24. 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.*

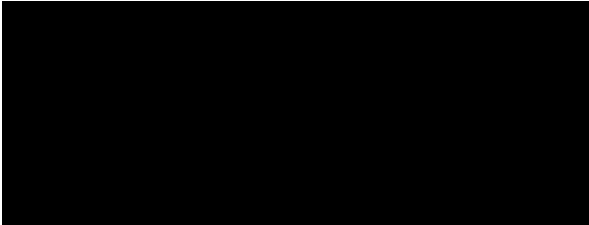
25. The formal agreement dated 14 January 2023 constitutes evidence under paragraph (3)(a) and combined with the submissions by the Applicant's agent (on the Applicant's wish to sell, so as to invest in a property in London where she currently lives) we agreed that paragraphs (2)(a) and (b) were satisfied.
26. 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.
27. There was no argument against the reasonableness of eviction. As the Respondent failed to attend the CMD we are unaware, when considering the application, of his personal circumstances beyond the information provided by the Applicant's agent. From the information provided to us, we were not satisfied that any of the information suggested it was unreasonable to evict, and we were further of the view that any argument on reasonableness that the Respondent may have sought to make would be adversely affected by the failure to continue to pay rent since expiry of the Notice to Leave. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
28. 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 Respondent 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.
29. The Rules allow at rule 17(4) for a decision to be made at a 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 14 June 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*.

Decision

30. 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, 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



Legal Member/Chair

14 June 2023

Date