



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/23/2193

Re: Property at 66 Stenhouse Street West, Edinburgh, EH11 3QT (“the Property”)

Parties:

Mrs Esther Green, 33 Ravelston Gardens, Edinburgh, EH4 3LF (“the Applicant”)

Miss Kirsten Wood, 66 Stenhouse Street West, Edinburgh, EH11 3QT (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of possession should be granted but with a delay in execution of 6 months.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 3rd July 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to requests from the Tribunal:-
 - A copy of the Tenancy Agreement dated 21st August 2018
 - Copy Notice to Leave dated 6th April 2023
 - Evidence of sending Notice to Leave by recorded delivery and received on 8th April 2023
 - Copy S 11 Notice to Edinburgh City Council
 - Copy e-mail to Edinburgh city council dated 3rd July 2023
 - Copy email from MHD Property agreeing to act in sale of property when the property is vacant dated 4th July 2023.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant attended along with her representative Mr Fortune from Gregor Fortune Ltd. The Respondent did not attend but was represented by Mr Scally from Granton Information Centre.
4. Mr Fortune the Applicant's representative advised that the Applicant was seeking an order for possession of the Property on Ground 1 that she required to sell the property. He explained that the tenancy has been going on since August 2018 when the Tenant moved into the Property and the landlord and tenant have a good relationship and the rent is paid up to date. He explained however that the Applicant is getting older, is now 73 and has some health issues and does not wish to have the stress of renting out a property. In addition she does not have a large pension and with the cost of living increasing now needs to sell the Property to release some equity to help supplement her pension. He confirmed she does not rent out any other properties and only owns this and her own home where she lives. Mr Fortune confirmed that it would be reasonable to grant the order because the landlord is getting older and being a landlord is now stressful for her and she needs the money that would be released from a sale of the Property.
5. Ms Scally asked if the Applicant was relying on Ground 1 only and not Ground 1A in addition and Mr Fortune confirmed they were seeking eviction on Ground 1 only and understood that might mean there is a delay in being able to enforce any eviction order if one were granted.
6. Mr Scally then advised that he had a statement from Respondent to read out and confirmed that Ms Wood accepts that the ground of eviction is met and the correct procedure has been followed but asked the Tribunal to take account of the Respondent's personal circumstances when considering if the order is reasonable. He went on to confirm that the Respondent has 3 children, a daughter aged 13 and two sons aged 12 and 4. He advised however that the 4 year old son is currently being assessed for autism and it is expected this will be confirmed and as such he requires his own bedroom. He advised that at the present time 4 year old is sleeping in his mother's bedroom and would struggle to sleep in a room with his older brother. If the diagnosis is confirmed he advised it would allow the Respondent to claim a higher housing allowance based on 4 bedrooms and not 3 and would mean she should get child disability payment which would allow her to look for private lets up to around £1,700 per month. He advised that private lets even at that level are scarce in Edinburgh but that would be preferable than the interim accommodation she may have to live in if the Council were to rehouse her as they will only act if and when she is made homeless. Mr Scally advised that the Respondent really needed further time to allow her application and her son's assessment to be completed and to allow her to seek other suitable accommodation. Under questions he confirmed that she was not raising an objection to the reasonableness of granting an order but was looking for further time.
7. From further questions from Mr Fortune it became apparent that the Respondent requested a reduction in the agreed rent of £995 to £850 in April 2020 and noted that her universal credit may pay up to a maximum just now

of £1095. The Tribunal noted that the rent has been paid up to date at the reduced rate since 2020.

Findings in Fact

1. The Applicant and the Respondent entered into a lease of the Property with the Respondent becoming the tenant from 21st August 2018.
2. The tenancy is continuing.
3. A notice to leave dated 6th April 2023 was served on the Respondent by recorded delivery stating that no proceedings would be raised before 2nd July 2023
4. These proceedings were raised on 3rd July 2023 and the application included a copy of the Notice to Leave.
5. The application is timeous.
6. A Section 11 notice has been served on Edinburgh City Council
7. The Applicant intends to sell the Property to release capital and wishes to do so after the Respondent leaves.
8. The Applicant finds being a landlord increasingly stressful and is struggling on her pension income.
9. The rent is paid up to date.
10. The Respondent has 3 children and is awaiting a decision on increased benefits.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was served by recorded delivery which was sent by the Applicant's representative on 6th April to the Respondent and the Applicant has provided a track and trace receipt showing it was signed for by "Wood" on 8th April. The Applicant has lodged an email from MHD Law confirming they will assist in the sale of the property once the property is vacant.
10. Grounds 1 require 84 days' notice in terms of the Act. The Notice sets out the notice period as expiring on 2 July 2022 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
11. The Application was lodged on 3rd July 2023. It was therefore lodged after the expiry of the Notice period and before the end of 6 months after the specified date and is therefore an application that the Tribunal can consider.
12. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. "It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by subparagraph (1) applies if the landlord-

- a. Is entitled to sell the Property and
 - 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.
13. 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
 - c. *And it is reasonable to do so*
14. The Tribunal accepted the verbal averments of Mr Fortune that the Applicant's intention is to sell the Property to release equity to supplement her pension and also to alleviate the stress of continuing to be a landlord. This is supported and evidenced by the written email from MHD Law.
15. The Respondent accepted the grounds of eviction are met and the Tribunal agreed so the Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground.
16. The landlord has given valid reasons for her wish to sell her Property namely that as she gets older and has health issues she does not wish the stress of continuing to be a landlord and also wishes to realise some money to supplement her pension.
17. The Respondent has indicated she has a child who is being currently assessed for autism and who will need his own bedroom which means she would be looking for a 4 bedroomed property but will need additional monies from a child disability payment which she has applied for. She is concerned that if the eviction is imminent neither the assessment nor the payment will be finished and paid and she may be left homeless living in temporary accommodation which would be very unsuitable for her and her children especially her 4 year old son. Mr Scally indicated that it was hoped this would be resolved within 6 months and it was her intention to seek a private rented property to avoid the temporary accommodation she felt the Council would initially offer given the shortage of social housing in Edinburgh.
18. The Respondent was not seeking to have a hearing on this but wished the Tribunal to take account of her circumstances in making their decision.
19. The Tribunal weighed up the evidence it had before it and considered it could make a final decision. The Tribunal unanimously agreed it would be fair and reasonable to grant an order of possession to allow the Applicant who is a 73 year old lady to sell her property to supplement her income and reduce her stress. However taking account of the Respondents position and need for further time to ensure she has her son's assessment and application for benefits finalised to allow her to seek the most suitable alternative accommodation, the Tribunal was satisfied that it would be appropriate to ensure that the order of eviction could not be enforced for at least 6 months. Although the current legislation in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 effects a pause of 6 months in any eviction order granted under Ground 1, the Tribunal is aware this will be reviewed by Parliament in March 2024 and so determined that, subject to any longer

period ordered by Parliament, the order would not be enforceable for at least 6 months from today's date even if the provisions of Section 2 Schedule 2 of the 2002 Act is repealed or amended by Parliament before then.

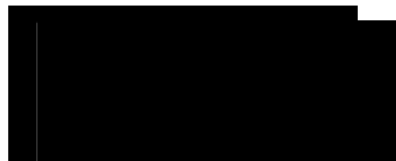
20. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application but with a delay of at least 6 months notwithstanding any repeal or variation reducing this period in the 2002 Act.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted.

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.

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Legal Member/Chair

15th November 2023

Date