



**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/23/2515**

**Re: Property at 46/1 Moat Street, Edinburgh, EH14 1PH (“the Property”)**

**Parties:**

**Mr John Fender and Mrs Elizabeth Fender, 496 Kilmarnock Road, Glasgow, G43 2BW (“the Applicant”)**

**Mr Salah Saad, 46/1 Moat Street, Edinburgh, EH14 1PH (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 46/1 Moat Street, Edinburgh, EH14 1PH under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicants base their

application on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement with a start date of 20 September 2020, a Notice to Leave, letter and email dated 11 January 2023, an emails from Crisis Scotland dated 25 May 2023, a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Edinburgh City Council dated 26 July 2023 and an email from Blair Caddell, Solicitors and Estate Agents with a quotation dated 10 January 2023.
3. On 29 September 2023 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 7 November 2023. The Respondent required to lodge written submissions by 20 October 2023. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 2 October 2023 and the Execution of Service was received by the Tribunal administration.
4. On 5 October 2023 the Applicants’ solicitor forwarded an Affidavit from John Lewis Fender dated 2 October 2023 and further mail correspondence from Solicitors and Estate Agents, Blair Cadell dated 1 and 5 September 2023.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on 7 November 2023 by way of teleconference. Ms Perrie, from Complete Clarity Solicitors & Simplicity Legal appeared for the Applicant. Mr Fender was also in attendance. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement between the parties with a start date of 20 September 2020, a Notice to Leave, letter and email dated 11 January 2023, an email from Crisis Scotland dated 25 May 2023, a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Edinburgh City Council dated 26 July 2023, an affidavit from Mr Fender and emails from Blair Caddell, Solicitors and Estate Agents dated 10 January 2023, 1 and 5 September 2023. The Tribunal noted the terms of these documents.
7. Ms Perrie moved the Tribunal to grant on Order for repossession. She referred to the Private Residential Tenancy Agreement and to the Notice to Leave served on the Respondent on 11 January 2023 which gave more than the required notice. The Tribunal noted the Notice to Leave relied on Ground

1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act She also referred to the email dated 25 May 2023 from Crisis Scotland which stated that they were working with the Respondent in securing other accommodation. She submitted she understood the Respondent was on the Council's waiting list and that the Property was no longer suitable for the Respondent. Mr Fender assisted the Tribunal and explained that the Respondent had had some difficulties with the Property for some time. He no longer felt comfortable in the Property which he felt was vibrating. There were concerns about Mr Saad's mental health. Neighbours had reported hearing noises from the Property. On being questioned by the Tribunal Mr Fender clarified that Crisis Scotland were working with Mr Saad and that he understood the Respondent now needed supported warden type accommodation. He confirmed both Crisis Scotland and the Respondent were in favour of the Respondent moving. Mr Fender explained that he wanted to sell the Property to pay off the mortgage on their own property. The Respondent was 61 and lived alone.

### **Findings in Fact**

8. The Applicants and the Respondent entered into Private Residential Tenancy Agreement dated 20 September 2020.
9. The Applicants own the Property. The Applicants intend to put the Property up for sale when they gain repossession of it to pay off their mortgage on their own property to fund their retirement. The email correspondence from Blair Caddell Solicitors and Estate Agents dated 10 January 2023, 1 and 5 September 2023 indicates they will deal with the sale and marketing of the Property.
10. The Applicants served a Notice to Leave on the Respondent by way of an email and letter on 11 January 2023. The Notice to Leave required the Applicant to leave the Property by 17 July 2023. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
11. The Respondent has sought help and assistance from Crisis Scotland in seeking rehousing.
12. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Edinburgh City Council on 26 July 2023.
13. The Respondent remains in the Property. The Respondent is a single man and lives alone.

### **Reasons for Decision**

14. The Tribunal considered the issues set out in the application together with the documents lodged in support.

15. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
16. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicants' intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 17 July 2023. The Notice to Leave was served on the Respondent by email on 11 January 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 17 July 2023 which is more than the required notice. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of more than 84 days. Accordingly, the Notice to Leave complies with Section 62.
18. The Tribunal considered the submissions made by Ms Perrie and the information provided by Mr Fender. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Perrie, that the factual basis of the application had been established and was satisfied the Applicants intended to sell the Property as soon as they regained possession.
19. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicants' intention was to sell the Property when they obtained possession of it to help fund their retirement by paying off their mortgage. The Tribunal was satisfied that the Respondent was actively working with Crisis Scotland who were helping him secure supported accommodation. The Tribunal accepted that the Property no longer met the needs of the Respondent who it would appear would benefit from supported accommodation. It was clear to the Tribunal that Mr Fender had a good relationship with Mr Saad and was genuinely concerned about his health. The Respondent was a single man who lived in the Property alone. The balance of

reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

20. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

21. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

# S Evans

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7 November 2023

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Legal Chair

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Date