

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/1516

Re: Property at 30/2 Rannoch Road, Edinburgh EH4 7EP (“the Property”)

Parties:

Mrs Monica Carmichael, c/o 31 Brotherton Wood, Livingston, EH54 9FQ (“the Applicant”) and

Miss Kathleen McIlwain, 30/2 Rannoch Road, Edinburgh, EH4 7EP (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
E Williams- Ordinary Member**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:

Background

1. This Application, contained in papers lodged with the Tribunal was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant, Mrs Carmichael, had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave served on the Respondent and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to Edinburgh City

Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied. Mrs Carmichael also submitted an email from her solicitor confirming her instruction to market and sell the Property as soon as possible.

3. The Respondent, Miss McIlwain, had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 24th October 2023, and the Certificate of Intimation was produced.

Case Management Discussions on 30th November 2023 and 15th January 2024

4. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 30th November 2023. Mrs Carmichael attended. Miss McIlwain did not attend and was not represented. Reference is made to the Notes on the CMD, also dated 30th November 2023.
5. A further CMD proceeded remotely by telephone conference call at 10am on 15th January 2024. Mrs Carmichael attended. Miss McIlwain did not attend and was not represented. The Tribunal noted that Miss McIlwain had received recorded delivery postal notification of the further CMD, and additional documentation submitted by Mrs Carmichael in respect of storage costs, on 20th December 2023 and 6th January 2024 respectively.
6. Mrs Carmichael re-iterated the submissions which she made at the previous CMD. She stated that the rent arrears owing are in the sum of £1,225.00 and the next rental payment is due on 26th January 2024. She said that she had not received any communications from Miss McIlwain since the last CMD. She said that she continued to have to make payment of a shortfall in her monthly mortgage repayments for the Property given the inconsistency of Miss McIlwain’s rental payments. She stated that she had applied to DWP for direct payment of rent on two occasions but had not received a response. She stated that she and her husband continue to live with their daughter, her husband, and three children. Mrs Carmichael acknowledged that there was equity of around £20,000.00 in the Property and that the realisation of this sum does not materially affect her and her husband’s decision to try to purchase another home. She said that they had recently made an unsuccessful offer to purchase another property to live in. Mrs Carmichael said that her over-riding concerns are the uncertainty of receipt of rent payments from Ms McIlwain, and the fact that she has to continue making payment of mortgage repayments shortfalls and has to carry out a second job in order to do so. She also stated that her husband was beginning to suffer health difficulties due to the nature of his own job and that her overall family situation was very stressful. Mrs Carmichael stated that she simply no longer wishes to be a landlord.

Statement of Reasons

7. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
8. Schedule 3 (1) (1) of the 2016 Act provides that it is an eviction ground that a landlord intends to sell the let property and confirms the criteria for the grant of an eviction order on this ground.
9. The Tribunal considered the Application papers, including the PRT, Notice to Leave and supporting papers. The Tribunal, in particular, considered the statements and submissions made by Mrs Carmichael at both CMDs. and with The Tribunal placed particular reliance on Mrs Carmichael’s consistent submissions regarding the stress caused by her continuing to carry on the role of landlord and her wish to sell the Property, through her solicitor, as soon as legally possible. The Tribunal also placed considerable weight on the fact that Miss McIlwain had not made any representations to the Tribunal or attended at the CMDs to contradict or oppose the grant of an eviction order. Having done so, the Tribunal found in fact that Mrs Carmichael seeks recovery of the Property in order to sell it and found in law that Ground 1 in Schedule 3 to the 2016 Act is satisfied and that it is reasonable to make an order for recovery of possession of the Property in favour of Mrs Carmichael.
10. After confirming their decision orally at today’s CMD the Tribunal stated to Mrs Carmichael that legal regulations govern the enforcement of the order for possession and encouraged her to seek independent housing law advice regarding those regulations, and the recovery/enforcement process.

Decision

11. The Tribunal therefore makes an eviction order as sought in this Application.

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.

G McWilliams

15th January 2024

Tribunal Legal Member

Date