



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/2518**

**Re: Property at 32 Gilberstoun, Edinburgh, EH15 2QY (“the Property”)**

**Parties:**

**Mr Ian Ogg, 50 Almond Green, Edinburgh, EH12 8UA (“the Applicant”) per his agents White Lettings (Edinburgh) Ltd EH20 Business Centre, 6 Dryden Road, Loanhead, EH20 9LZ (“the Applicant’s Agents”)**

**Miss Stephanie Thomson, 32 Gilberstoun, Edinburgh, EH15 2QY (“the Respondent”)**

**Tribunal Member:**

**Karen Moore (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the Ground for eviction is not satisfied refused the Application and did not grant an Order.**

**Background**

1. By application received between 27 July 2023 and 22 August 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act, the landlord intends to sell the Property.
2. The Application comprised the following:
  - i) copy Notice to Leave in terms of Ground 1 of Schedule 3 to the Act;
  - ii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council being the relevant local authority and

- iii) copy email from DMD Law to Susan Whitelaw accepting her appointment in relation to the sale of the Property.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 20 November 2023 at 10.00 by telephone conference.

#### **CMD**

4. A Case Management Discussion (the "CMD") took place on 20 November 2023 at 10.00 by telephone conference. The Applicant was not present and was represented by Mrs. K. McDonald of the Applicant's Agents. Ms. Thomson, the Respondent, was present and was not represented.
5. The Tribunal explained that its role is to determine if the Ground for the Order is satisfied, if the statutory procedure of the 2016 Act has been carried out properly and if it is reasonable to grant the Order.
6. The Tribunal heard from both Mrs. McDonald and Ms. Thomson. The Tribunal advised that its view was that there was insufficient information to make a decision at the CMD and so the Tribunal would fix a Hearing of evidence in respect of establishing the Ground for the Application and reasonableness to grant an Order.
7. The Tribunal issued the following Direction in respect of information required:-
- 1. *The Applicant is required to submit evidence to show that Susan Whitelaw is entitled to instruct the sale of the Property;*
  - 2. *The Applicant is required to submit any documentary evidence on which he intends to rely in respect of reasonableness:*
    - i) *His requirement to sell the Property to fund his retirement;*
    - ii) *Details of any property portfolio held by him;*
    - iii) *The prospect of the Applicant selling the Property with the Respondent remaining as sitting tenant;*
    - iv) *Any other matters which the Applicant considers the Tribunal should have regard to in reaching a decision on reasonableness and*
    - v) *A witness list, if any*
  - 3. *The Respondent is required to submit any documentary evidence on which she intends to rely in respect of:*
    - vi) *Her personal circumstances and the impact which granting the Order will have on her and her son;*
    - vii) *The likelihood of alternative accommodation being available to her;*
    - viii) *Any other matters which the Respondent considers the Tribunal should have regard to in reaching a decision on reasonableness and*

ix) A witness list, if any.

8. On 24 November 2023, the Applicant's Agents, on his behalf, submitted a letter hand written by the Applicant confirming that Susan Whitelaw is wife, that she has full authority to act on his behalf in respect of the Property and that he used his early retirement pension lump sum to pay his ex-wife for her share in the Property. The Applicant's letter stated that he now has a short-fall in his pension and "getting my house back will rectify this" and that, at his age, he does not want to be a landlord "with all the hassles that this can bring".
9. No other information or evidence was provided by the Applicant or the Applicant's Agents.
10. By email dated 1 March 2024, the Respondent, Ms. Thomson, submitted the following written representation:

*"I would like to tell you about a few points I feel are relevant in understanding my situation better. I have never missed a rent payment and have always been a good tenant which was something my agent always said and they stressed that for this reason they hoped I would stay at the property for as long as possible. The property (32 Gilberstoun) is set above 3 car garages and it is for this reason that the house is extremely cold during the colder months. A significant amount of cold air flows up into the apartment from below and so there has been a problem with damp and condensation. My son often suffers from sinus issues and a cough and I do feel that this problem contributes to that. I requested something be done about this and it was agreed that the garage would be insulated. In this time, they did replace the old rubbish storage heaters with something more effective. However I waited and waited for someone to come to look at the garages but nothing came to fusion. Then I requested permission to get a cat and was told to go ahead. A few weeks later I was told by the agent that I was soon to receive formal notice. This upset me as I feel that the owner must of had an inclination that he was considering this yet I went out and got a cat thinking we would be secure in this property for a while. Now I am a single parent with a small child and a pet. This is making it extremely hard for me to find suitable accommodation now. I would love to move somewhere else that's more suitable, less cold and felt more like home for us but the council will not do anything to help me until I am given an official eviction which is not ideal but I feel like I have no other choice as I cannot find a private let that is in my budget and allows pets. It is very important for me to do my best to try and keep my son at his school. It has been a difficult few years for us as his father was mentally and emotionally abusive towards me and now that I am free of that situation, I have built a support network in the area where my son attends school (Musselburgh). It is a delicate balancing act between, school, trains, my work and after school care (which is provided for at his school also). We don't have family here and I take medication for PTSD and I am desperately hoping that East Lothian council can help us find somewhere to live in this area. So I just wanted to give my side of things. I would rather not be in this situation. I just want a safe and secure home to take care of my son."*

11. No other information or evidence was provided by the Respondent.

### Hearing

12. The Hearing took place on 12 March 2024 at 10.00 by telephone conference. The Applicant was not present and was represented by Mrs. K. McDonald of the Applicant's Agents. Miss Thomson, the Respondent, was present and was not represented.

13. The Tribunal asked Mrs. McDonald why the Applicant was not present and why the information requested in the Direction had not been provided. Mrs. McDonald stated that she had received no further information from the Applicant and that she understood the he is currently on holiday and that this might explain his absence.

14. In response to questions from the Tribunal in respect to the information requested in the Direction, Mrs. McDonald advised that she is the agent and not the landlord and cannot give the Tribunal information which she does not have. She stated that it was not clear to her from the CMD what was required. The Tribunal advised that it had explained what was required verbally at the CMD, had issued a full note stating that there was insufficient information to make a decision at the CMD and that a Hearing of evidence would be fixed to establish both the Ground for the Application and reasonableness to grant an Order and had issued a Direction listing the evidence required. The Tribunal stated that it did not accept that a professional letting agent did not understand what was required.

15. Mrs. McDonald stated that from earlier conversations with the Applicant, she understood that he had spoken to selling agents about selling with a tenant in place but, as the rent was so low, it was not an option for an investor. She also stated that the housing market in Edinburgh was difficult as rents were high and there was little available accommodation, as the Respondent had found out. Mrs. McDonald accepted that this was anecdotal and she had no evidence to support it in respect of the Property.

16. The Tribunal asked Mrs. McDonald what she was asking the Tribunal to do. She responded that she apologised for the lack of information. She stated that the tribunal process was new to her, as it was to the Respondent, and that, in her view, it was not unreasonable for the Applicant to want his house back. She advised that she had provided the Applicant with the CMD Note and the Direction but had not had any information from him and that an explanation for this might be that he is on holiday. She gave no indication that the required evidence and information might be available but suggested that she be given time to find out what could be provided.

17. Miss Thomson advised the Tribunal that her position had not changed from the CMD and her written submission, and, that East Lothian Council would not offer any assistance unless an eviction order was granted. She stated that she did not want to be in this position and felt that she was in limbo.

18. The Tribunal adjourned to consider the information before it and how to dispose of the Application.

### **Tribunal's assessment of the evidence**

19. The evidence for the Applicant was given by Mrs. McDonald on his behalf. Mrs. McDonald's evidence was vague in relation to the Applicant's circumstances and in respect of facts which related to the Property. Her evidence was a generalisation of the Edinburgh property market without foundation and without reference to the Property itself. She could not expand on the information provided at the CMD and could not provide any information to evidence the Ground on which the Application proceeded. The Tribunal accepted that the Applicant's instructions to Mrs. McDonald may have been lacking. However, a professional letting agent bound by a statutory Letting Agent Code of Practice ought to have been aware the tribunal is a judicial body, ought to have been aware of the standard of evidence required and ought to have taken steps to ensure that that standard was met or ought to have considered withdrawing from acting.
20. Having outlined her position clearly in her written submission, Ms. Thomson gave a brief statement that she could not secure a private let and that the local authority refused to assist until an eviction order had been obtained. The Tribunal had no reason to doubt Ms Thomson or to reject her evidence.

### **Possible adjournment of the Hearing.**

21. The Tribunal, firstly, considered if it should adjourn the Hearing to allow the Applicant an opportunity to submit evidence in support of the Application. The Tribunal took the view that the Applicant and the Applicant's Agents had been given clear instructions at the CMD, in the CMD Note and in the Direction and so were aware of what was required. The Tribunal's view was that Applicant and the Applicant's Agents had taken a cavalier approach to the Hearing and had simply not prepared for it, with the Applicant possibly going on holiday and not instructing his agents in any meaningful way. From Mrs. McDonald's vague and unsupported statements and her general casual attitude to the tribunal process, the Tribunal considered that, if an adjournment were granted, it is unlikely that any useful evidence would be brought forward.
22. The Tribunal considered the position of the Respondent. The Tribunal accepted that the proceedings have had an injurious effect on her in respect of the uncertainty of her housing position and the needs of her son. The Tribunal considered that continuing the proceedings further would further impact adversely on the Respondent.
23. The Tribunal considered Rule 2 of the Rules which states:

*"The overriding objective (1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so*

*far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the issues”*

24. The Tribunal is bound by this Rule. The Tribunal considered that, in this Application, “dealing with the proceedings justly” was balancing the interests of both Parties. The Applicant, having taken the view that the onus of proof resting with him, had had an opportunity to present a properly evidenced case, had not taken that opportunity and had not shown that he was likely to do so. Having taken the view that the effect of the Application on the Respondent was detrimental, the Tribunal decided that adjourning the Hearing was not a proper application of Rule 2. The Tribunal, therefore, declined to adjourn the Hearing and proceeded to determine the Application.

### **Findings in Fact**

25. From the Application, the CMD, the written representations of the Parties and the Hearing, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties which began on 5 April 2021;
- ii) The correct statutory procedures in respect of the Notice to Leave and the Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 have been carried out;
- iii) DMD, solicitors, by letter dated 17 April 2023 accepted an appointment to act as selling agents from the Applicant's wife, on his behalf, to sell the Property and sought further instructions on the sale of the Property;
- iv) There is no evidence that DMD, solicitors, received further instructions on the sale of the Property;
- v) The Respondent is a single parent, in full time employment and resides with her primary school age son and a pet cat;
- vi) The Respondent suffers from a stress related health condition;
- vii) The Respondent has support from her son's school in respect of his care;
- viii) The Respondent requires to reside in the locality of the Property to access this support;
- ix) The Respondent has no other support with her son's care;
- x) The Respondent has not been able to secure alternative accommodation.

### **Decision and Reasons for Decision**

26. The Tribunal had regard to all the information before it and to its Findings in Fact.

27. The issue for the Tribunal was to determine whether or not to grant the Order sought.

28. The Ground on which the Application proceeds is Ground 1 which states *“It is an eviction ground that 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.”*
29. Ground 1 (1) states that intention to sell is an eviction ground. Ground 1 at subsections (2) and (3) sets out how Ground 1 is to be satisfied.
30. With regard to Ground 1(2)(a) as the Applicant is the registered owner of the Property, he is entitled to sell it and so the Tribunal accepts that this part of Ground 1 is satisfied.
31. The application of Ground 1 (2) (b) is assisted by the wording of Ground 1(2)(b)(c). The evidence before the Tribunal is the response from DMD solicitors accepting an appointment the Applicant’s wife on his behalf to act in a possible sale of the Property. There is no evidence that the solicitors have been instructed further in this regard.. There is no evidence that a Home Report has been instructed. There is no evidence that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. The Tribunal finds that this part of Ground 1 is not satisfied.
32. Having found that Ground 1 (2) (b) is not satisfied, it follows that Ground 1 (1) is not satisfied.
33. Having found that Ground 1 (1) is not satisfied, there is no requirement on the Tribunal to consider Ground 1 (2) (c ) and consider reasonableness. However, had the Tribunal been required to consider reasonableness, on the facts before it, it is unlikely that the Tribunal would have found it reasonable to grant the Order.
34. This decision is 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.

# K Moore

12 March 2024

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Legal Member/Chair

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Date