



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private
Housing(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/23/3596

**Re: Property at 23/3 Hermand Crescent, Slateford, Edinburgh, EH11 1RB (“the
Property”)**

Parties:

**Silverwells Investments Ltd, c/o Tay Letting Ltd, 8 Eagle Street, Craighall
Business Park, Glasgow, G4 9XA (“the Applicant”)**

**Mr James Edward, Mr Tayler Edwards, 23/3 Hermand Crescent, Slateford,
Edinburgh, EH11 1RB; 23/3 Hermand Crescent, Slateford, Edinburgh, EH11
1RB (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for the eviction
of the Respondent from the property.**

Background

1. By application dated 11 October 2023 the Applicant’s representatives, Tay Letting Limited, Glasgow applied to the Tribunal for an order for the eviction of the Respondents from the property in terms of Ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representative submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice and a quote for refurbishment together with other documents in support of the application.

2. By Notice of Acceptance dated 28 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 1 February 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 20 March 2024. The Applicant was represented by Mr David Gibb from the Applicant’s representatives and the Respondents attended in person.
5. The parties were in agreement that the Respondents had commenced a Private Residential tenancy of the property on 17 November 2018 at a rent of £695.00 per calendar month.
6. The Respondents confirmed that they had been served with a Notice to Leave under Ground 3 of Schedule 3 of the 2016 Act on 29 June 2023 and took no issue with the validity of the notice.
7. The Tribunal noted that the Applicant’s representative letting agents had sent a Section 11 Notice by email to Edinburgh City Council on 10 October 2023.
8. The Respondent Mr James Edwards said that he was not exactly opposing the order sought but explained that he was currently unable to work due to ill health. He further explained that he was undergoing tests and had been given an endoscopy and colonoscopy and was waiting to see a specialist. He said he had been waiting about three months. Mr Edwards went on to say that because he was unable to work, he could not afford private rented accommodation in the area and he had been advised by the local authority that it might take up to two years to find him local authority housing. Mr Edwards said that because of his condition he could not share a bathroom in homeless accommodation as he had to go to the toilet fifteen to twenty times a day. Mr Edwards advised that his son Tyler Edwards was not working either and although not officially yet registered as his carer was carrying out carers duties by going to the shops for him. Mr Edwards said that currently his benefits met the rent on the property but would not meet increased rents in the area and that he and his son would need a combined income of £34000 per year to do that. Mr Edwards said that he needed more time to find other accommodation because of his health. He said that the property needed new windows and the damp in the property treated but that it did not need the complete refurbishment proposed by the Applicant. He suggested that when the Applicant had purchased the property, he had thought it had been good as they would carry out the repairs needed and would look after the tenants but had concluded they

were just looking after themselves. Mr Edwards went on to say that the situation he was in was very stressful and was having an adverse effect on his health and that he needed more time to find a place with his own toilet.

9. For the Applicant. Mr Gibb explained that the Applicant had purchased the block of flats in which the property was located in February 2023 and it had become apparent that there had been no investment in the development for five or six years and this had led to damp within the properties and issues with the roof that were currently being resolved. Mr Gibb said that as properties became vacant the Applicant was carrying out refurbishment to bring the properties up to the repairing standard. Mr Gibb said that the Respondents' property had been inspected and assessed as in need of refurbishment and as a result the Applicant was looking to recover the property as the work could not be done with tenants in the property. Mr Gibb went on to say that the Applicant would be willing to wait in order that the Respondents could find suitable alternative accommodation, He submitted that as the local authority would not assist the Respondents unless an order was granted that the Tribunal should grant the order sought but that the Applicant would not enforce it but would give the Respondents time to find alternative accommodation.
10. The Tribunal queried the terms of the quote provided by the Applicant's representative and whether the kitchen and bathroom currently met the repairing standard. Mr Gibb said that the kitchen and bathroom were the original from when the property was built about thirty years ago and needed to be replaced. Mr Edwards said that the kitchen was in working order and that the shower had been replaced and wetwall installed in the bathroom. He said that the main issues with the property were damp and windows needing replaced.
11. In response to further queries from the Tribunal Mr Edwards confirmed the property was located on the second of four floors. He also said that he had not been able to find any other two-bedroom properties in the area at an affordable rent. For the Respondent Mr Gibb said that given Mr Edward's health issues the Applicant would be happy to allow the Respondents a period of six months to find alternative accommodation. For the Respondents Mr Edwards said that if they were given six months that would give him time to see an improvement in his health and perhaps find employment and would remove some of the stress.

Findings in Fact

12. The Respondents commenced a Private Residential Tenancy of the property on 17 November 2018.

13. A Notice to Leave under Ground 3 of Schedule 3 of the 2016 Act was served on the Respondent on 29 June 2023.
14. A Section 11 Notice was sent to Edinburgh City Council on 10 October 2023.
15. The Applicant intends to refurbish the property.
16. The Respondents would be unable to remain in the property while the refurbishment was being carried out.
17. The Respondent James Edward suffers from ill health and has been forced to give up work and is waiting to see a specialist.
18. The Respondents have been unable to find private lets at affordable rent in the area.
19. The Respondents have applied for local authority housing.
20. The Applicant has offered the Respondents a period of six months to find alternative accommodation and the Respondents consider that to be reasonable.

Reasons for Decision

21. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 17 November 2018. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 3 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Edinburgh City Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's representatives' oral submissions that the Applicant intends to refurbish the property.
22. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. In reaching its decision the Tribunal accepted that the property did need to be refurbished and that there were issues with regards to damp and that windows needed replaced and that given the age of the kitchen and bathroom they too were in need of refurbishment. That being the case the Tribunal accepted that it was understandable that the Applicant might wish to carry out the proposed refurbishment of the property. The Respondents did not altogether oppose

the application but were concerned at the prospect of being made homeless given Mr James Edwards health issues and were seeking time to find alternative accommodation. Both parties were of the view that delaying enforcement of the order for a period of six months was reasonable in the circumstances as this would give Mr Edwards some time to obtain treatment and possibly then employment. It would also allow the Respondents to progress their homeless application with the local authority.

23. In the circumstances the Tribunal was satisfied that it was reasonable to grant the order sought subject to it not coming into effect for a period of six months from the date of the decision to allow Mr James Edward's health to improve or for him to obtain suitable homeless accommodation whereby he does not need to share a toilet given his current condition.

Decision

24. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

**Graham Harding
Legal**

**20 March 2024
Date**