



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/23/4362

Re: Property at 207 Calder Road, Edinburgh, EH11 4RG (“the Property”)

Parties:

Mr Calum Watson, Miss Eilidh Watson, 14 Cheviot Crescent, East Kilbride, G75 9GA; Flat 4, 6 Buckle Street, Aldgate, London, E1 8ZS (“the Applicant”)

Miss Megan Berry, 207 Calder Road, Edinburgh, EH11 4RG (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

1. On 6th December 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”).
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 21st May 2021 and a rent of £995 per month;
 - ii. Copy Notice to Leave only citing Ground 1 and not ground 12 dated 30th June 2023;
 - iii. Copy email dated 30th June 2023 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

v. Rent Statement

3. The Application was served on the Respondent by Sheriff Officers on 23rd February 2024.
4. On 12th March 2024 the Respondent sent an email to the Tribunal asking for an extension to the time scale for lodging a written response. A further 14 days was allowed by the Tribunal. Nothing was received from the Respondent.
5. On 22nd March 2024 the Applicant's agent lodged a document containing further information, including an email dated 6th March 2024 from VMH Solicitors confirming they would handle the sale of the property.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Prabaharan of Trinity Lettings. There was no attendance by the Respondent or any representative on her behalf.
7. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicants needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
8. Miss Prabaharan sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She also sought that Ground 12 be included as it had been mentioned on the Application form.
9. The Tribunal asked Miss Prabaharan to address them on the legal position in relation to including Ground 12 when it was not in the Notice to Leave. She was not in a position to do so. The Tribunal took the view that in terms of section 52 (5) of the Act they could not allow it.
10. Miss Prabaharan said that the Applicants intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating it. She said that the Applicant wished to sell the property as it was no longer financially viable for them to continue to own it. The Applicants are brother and sister, they had lived in the property while they were students and had then rented it out while their lives moved in different directions. They were both now at a stage where they wished to buy houses and could not afford to do so while still owning this property. She made reference to the statement of reasons to sell which was included in the tribunal papers, and which gave comprehensive information about costs. She said that the Applicants had no other rental properties.
11. The Tribunal was satisfied that the Applicants wished to sell, and asked Miss Prabaharan to address it on reasonableness. She referred again to the financial pressures that the Applicants were facing due to increased costs of keeping the property. She went on to say that the Respondent was now in arrears of around three months' rent payments, totalling £3041 and this had increased that

financial pressure. She said that the Respondent lived in the property, which is an upper quarter villa with three bedrooms, with her three children. She was aware that one of the children may be autistic, but the property had not needed to be adapted because of any disability. She said that she was not sure if the Respondent was in work, she had been at the beginning of the tenancy, and she was not aware if the Respondent having applied for any benefits. Rent payments had always come directly from her. She said that the Respondent had reported some repairs issues but would not grant access for these to be dealt with.

12. Miss Prabakaran made reference to an email lodged with the papers dated 21st September 2023 from Crisis UK, on behalf of the Respondent, which said that the Respondent had applied to City of Edinburgh Council for accommodation but could not be treated as homeless until she had an eviction order from the Tribunal.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 21st May 2021;
- c. A Notice To Leave, dated 30th June 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 6th December 2023;
- f. The Applicants intend to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicants wish to sell to enable them to purchase their own properties and to alleviate the financial pressures of owning the property;
- h. The Respondent is a single parent with three school children;
- i. The Respondent is in arrears of rent in the amount of £3041;
- j. The respondent has not allowed access for repairs.

Reasons for Decision

13. It was mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g) in paragraph 8 (not an employee)—

(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii) for sub-paragraph (2)(c) substitute—

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

14. The Tribunal now has to decide if it is reasonable to grant the eviction order.

15. The Tribunal was of the view in this case that the Applicants had established Ground 1 by provision of the email from VMH Solicitors and the submissions by the letting agent. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s reasons for wishing to sell, which it considered to be reasonable. The Tribunal balanced that against the facts that

the Respondent was a single parent with three young children, but also took in to account the contents of the email from Crisis referring to the Respondent not being able to be treated as homeless until an eviction order had been granted, and the fact that the Respondent had not attended the CMD. The Tribunal considered that the balance was in favour of deciding that it was reasonable to grant the order.

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.



05 April 2024

Legal Member/Chair

Date