



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/23/4508**

**Re: Property at 29 Edenhall Bank, Musselburgh, EH21 7JQ (“the Property”)**

**Parties:**

**Mr Jeffrey Dalgleish, Mrs Janette Dalgleish, 262 Rullion Road, PENICUIK, EH26 9JL (“the Applicants”)**

**Alex Ross, 29 Edenhall Bank, Musselburgh, EH21 7JQ (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By lease dated 31<sup>st</sup> July 2020 and 16<sup>th</sup> September 2022 the Applicants let the Property to the Respondent.
2. The current lease is a private residential tenancy in terms of the Private Housing (Tenancies) Scotland Act 2016. (“The 2016 Act”).
3. Prior to the private residential tenancy agreement being created there had been an assured tenancy in terms of the Housing (Scotland) Act 1988. Of consent, the private residential tenancy agreement was subsequently entered into between the same parties.
4. On 23<sup>rd</sup> June 2023, the Applicants served a notice to leave upon the Respondent intimating that they wished recovery of the Property as they intended to sell the Property.
5. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

6. Documentation was provided to confirm that a firm of solicitors had been engaged to sell the Property when vacant possession was obtained.

## **THE CASE MANAGEMENT DISCUSSION**

7. The Applicants did not participate personally in the case management discussion but were represented by their solicitor, Mr D Gray of Messrs Gilson Gray LLP. The Respondent participated personally.
8. Mr Gray moved the Tribunal to grant an eviction order on the grounds intimated, that being the intention of the Applicants to sell the Property. The Respondent, Mr Ross, did not oppose that. He intimated that he was wishing an eviction order to assist him securing alternative accommodation from the local authority.
9. The Respondent confirmed that he had been resident in the Property for approximately 10 years, explaining that the original tenancy agreement was replaced by the current private residential tenancy agreement after there had been a change of the letting agent dealing with Property. He was made aware approximately 18 months ago that the Applicants intended to sell the Property and that it had been their plan previously to do so to fund their retirement.
10. The Respondent confirmed that he has a live application for housing with his local authority. Once he receives confirmation that an eviction order has been granted by the Tribunal he will then become active for assessment for the allocation of housing. He confirmed that he resides at the Property with his wife. There are no other family members at the Property.
11. Mr Gray advised that the Applicants have only one Property which they let, that being the Property subject to these proceedings. It was always their intention to sell the Property around this time to assist in the financing of their retirement. The Applicants currently survive on joint pension income of approximately £24,000.00 per annum. The rental income from the Property at present is £744.00 per month. The mortgage payment to be made by them, however, amounts to £755.00 per month. There is a shortfall of £11.00 or thereby. While that is not a significant amount on a monthly basis, Mr Gray pointed out, firstly, that the Applicants require to pay income tax on their rental income and, secondly, that because there is a shortfall in relation to rent, in the event of any repairs being required to the Property, the Applicants would have difficulty in being able to fund the same.
12. Mr Gray advised the Tribunal also that the mortgage will be due for repayment in full in the near future. The Applicants need to sell the Property to enable them to make repayment of the mortgage. They do not have sufficient funds to pay the mortgage without the Property being sold. If the Property is not sold it is likely that the lenders will call up the standard security.

## **FINDINGS IN FACT**

13. The tribunal found the following facts to be established: -
  - a) By lease dated 31<sup>st</sup> July 2020 and 16<sup>th</sup> September 2022 the Applicants let the Property to the Respondent.
  - b) The lease is a private residential tenancy in terms of the 2016 Act.
  - c) On 23<sup>rd</sup> June 2023, the Applicants served a notice to leave upon the Respondent intimating that they wished recovery of the Property as they intended to sell the Property.

- d) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- e) A firm of solicitors has been engaged to sell the Property when vacant possession was obtained.
- f) The Applicants intend to sell the Property.

## **REASONS FOR DECISION**

14. The Tribunal, based on the undisputed information before it, had no difficulty in accepting that the Applicants intended to sell the Property and, indeed, required to do so at some point in the near future to enable them to repay the outstanding mortgage. The Respondent did not dispute that either. The Respondent confirmed that he had no opposition to an eviction order and, indeed, was wishing such an order to assist him in being allocated suitable accommodation by the local authority. In the circumstances, it is reasonable that an order be granted.
15. While the Respondent did not object to an eviction order being granted, given what he had said about his application for housing only being assessed after an eviction order had been granted, and given the likely timescales for him being allocated alternative housing, the Tribunal determined that it was appropriate to defer enforcement of the eviction for a period of 8 weeks from the date on which it was granted. The Tribunal, therefore, deferred enforcement until 12 noon on 31<sup>st</sup> May 2024.

## **DECISION**

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Schedule 3 to said Act

Order not to be executed prior to 12 noon on 31<sup>st</sup> May 2024

## **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.**

**Virgil Crawford**

**Legal Member**

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**5 April 2024**

**Date**

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