



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/23/2257

Re: Property at 2/12 Lindsay Road, Edinburgh, EH6 4EP (“the Property”)

Parties:

Mr Mushtaq Yousaf, 18 The Oval, Glasgow, G76 8LY (“the Applicant”)

**Mr Kevin Itoe, Mrs Belinda Asong, 2/12 Lindsay Road, Edinburgh, EH6 4EP;
2/12 Lindsay Road, Edinburgh, EH6 4EP (“the Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Landlord Applicant is entitled to sell the let property and intends to sell the let property for market value within three months of the tenants ceasing to occupy it and it is reasonable on accounts of those facts to issue an eviction order.

Background

1. This application for an eviction order was first lodged with the Tribunal on 7th July 2023 and accepted by the Tribunal on 3rd November 2023. A case management discussion was set down for 26th January 2024 at 2pm

Case Management Discussion

2. The case management discussion was attended by Mr Livingstone of Landlord Specialist Services Scotland on behalf of the Applicant and the Respondent Mr Itoe attended and represented both himself and the second Respondent Mrs Asong.

3. The Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, a postal slip, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to Edinburgh City council. Also submitted on behalf of the Applicant was a letter sent to the Respondents before the Notice to leave was sent, landlord registration details, and emails from a property marketing firm suggesting that the property was being actively marketed.

4. The parties had entered into a private residential tenancy agreement at the property, a 3 bedroom flat with effect from 3rd May 2022. The landlord Applicant is the property owner.

5. Mr Livingstone confirmed that the Applicant wished to sell the property as soon as possible and it had been on the market for some time. He asked for the eviction order to be granted. A number of offers to buy the property had fallen through, 4 having failed due to timescales and delay from the potential buyer's side. He had been advised by the landlord that there was, on the morning of the case management discussion a party interested in purchasing the property but there was an issue regarding the securing of a mortgage and Mr Livingstone could say no more than that at that time.

6. On behalf of the Respondents Mr Ito said initially that he was opposing the order, that he was not opposed to moving out and then stated that he did not consider that it was reasonable for the order to be made.

7. He explained that he had moved into the property thinking it was a long term let and it had been his intention to stay a few years then buy a property. He and Mrs Asong had brought all of their own furniture into the property. He and Mrs Asong had tried to find other accommodation but it was difficult to find an unfurnished property. He said they would have to put their items in storage if they took an unfurnished property and neither he nor Mrs Asong could drive, she having failed her test recently. He said that most properties which come up are very far away or suitable properties do not come up at all. He had been to see numerous properties and noted interest in them.

8. He explained that he and Mrs Asong have 4 children, aged 11, 8 and twins aged 2. All the family enjoy good health. He explained that the two older children are still at a local school and the older boy is in primary 7 and they do not wish to move him at this critical time in his education.

9. He said that average rents were more than he was paying for this property. He explained that he and Mrs Asong both worked and she worked nights. He said they could not afford higher rent. They had asked for help using various avenues but the prices of houses to rent to accommodate 6 people with 3 bedrooms were very high.

10. He said that they had looked at buying property but he could not get a mortgage due to a high interest loan showing on his credit score and the fact that some properties required a 28% deposit which they did not have. He said that he had a trust deed and he said things would improve when he paid the last payment for this, later in 2024 and when Mrs Asong passed her driving test which she was taking again.

11. He said that the council had advised them to make themselves homeless and he had registered with the housing index to bid on properties. He opposed the order on reasonableness and said that he wanted to stay until he could buy somewhere which might be some time away.

12. The Tribunal considered that a hearing would require to be fixed and after discussion it was agreed that this would take place by video conference. The Tribunal Legal member indicated that a Direction would be issued to have each side confirm the details of any witnesses to be called and to lodge further information on the issue of reasonableness. A hearing by WebEx video teleconference was fixed for Wednesday 24th April at 10am.

Hearing

13. Mr Livingstone attended the Hearing on behalf of the Applicant. Neither of the Respondents attended the Hearing and no contact had been received from him or Mrs Asong in relation to the Direction issued but Mr Ito had attended a practice session for the WebEx system. The Tribunal clerk sent an email to the Respondents to remind them of the Hearing but no response was received. Mr Livingstone requested that the tribunal proceed in their absence as his client was very keen to sell the property still.

14. The Tribunal considered that it was appropriate to proceed in the absence of the Respondents as they had been advised of the hearing and had not indicated that they could not attend.

15. Mr Livingstone confirmed that the Applicant was currently in Hong Kong and he understood he was looking to dispose of the property as the last of his assets to be disposed of. The property had been actively marketed for some months, the Home Report had been refreshed, and the Applicant had tried to pursue a sale which would be to an investor which would allow the tenants to stay in the property but this had not been successful and the property was now being marketed for sale with vacant possession and the eviction was necessary. Mr Livingstone confirmed that the Applicant was liquidating all his assets for personal reasons which he had not been willing to go into. The Applicant owns the shop downstairs from the property and a number of other commercial premises. This was the only residential property he has in the portfolio. He was aware that the property which was being marketed for sale by another firm had obtained many viewers on the firm website. This was the only reason why the property was being sold. The Respondents paid their rent every month and their management of the property was immaculate. Mr Livingstone said there was good level of communication with the Respondent tenants. He said that Mr Ito had spoken to him about possibly getting a mortgage to buy the property but this had not come to anything and he assumed there was some issue with that. Mr Livingstone considered it was unfortunate that rent payments did not go on a credit file as these had all been paid by the Respondents.

16. Mr Livingstone confirmed that the Applicant had connection to parts of India but he did not know what his plans were after any sale was achieved. He said that he was surprised that the Respondent Mr Ito had said at the case management discussion that he thought it was unreasonable for an eviction order to be granted as his

impression was that he had accepted that the landlord needed to sell the property. He had no up to date information regarding the tenants and did not know if the Respondent Mrs Asong had passed her driving test. He knew the Respondents had approached the council regarding property but he did not know if they had moved up the banding to be offered any properties.

17. Mr Livingstone submitted to the Tribunal that the landlord had done what he could to keep the tenant in the property but no investor would take them as sitting tenants and he required to sell the property with vacant possession. Mr Livingstone submitted that it was reasonable to grant the order requested. He said that if an order was granted discretion would be used as to the way in which the order was enforced given that the tenants had a number of children.

18. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

19. The parties entered into a private residential tenancy at the property which is owned by the Applicant with effect from 3rd May 2022.

20. The Respondents live at the property a three bedroom flat with their four children, twins aged 2 and two others aged 8 and 11.

21. At some stage after the Notice to Leave was served on the Respondents the Respondent Mr Ito expressed an interest in obtaining a mortgage to buy the property.

22. The Respondents have approached the council for assistance with housing but would prefer to stay in the property until they can buy another property.

23. The Respondents accept that they have received a Notice to Leave from the landlord Applicant.

24. The property had been actively marketed for sale by a Property Sales and Management firm based in Glasgow on behalf of the Applicant since June 2023 but no buyer has yet been secured.

25. Initially the Applicant attempted to sell the property with the tenancy continuing but could not secure a buyer.

26. The Applicant intends to sell the let property at market value for personal reasons and he has been selling off all his property portfolio and this property is the last one to be sold

27. The Applicant attempted to place the property on the market for sale with the Respondents' tenancy to remain in place but he was unsuccessful in attracting an investor and the property is now marketed for sale with vacant possession.

28. During the period the property has been marketed for sale the agents have received a number of offers which have not proceeded due to the delay in timescales for vacant possession of the property.

29. The Applicant sent a Notice to leave dated 26th October 2022 to the Respondents in proper form and setting out the eviction ground, indicating that the earliest date an application for eviction would be made to the Tribunal would be 21st January 2023.

30. This Notice to Leave was posted to the Respondents on 25th October 2022 and was received by them on 27th October 2022.

31. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Edinburgh City Council on 6th July 2023.

Reasons for Decision

32. In this application there was no dispute that a Notice to Leave in proper form had been sent to the Respondents and that an appropriate Notice had been sent to the local authority. The Tribunal was presented with evidence of the property being marketed for sale as far back as June 2023.

33. The Respondent Mr Ito had attended a case management discussion and indicated that the Respondents opposed the granting of an order on the basis of reasonableness and mentioned their wish to keep their eldest son at the same school as he was in primary 7 and expressed concern about their ability to find other properties in the area and the fact that Mrs Asong could not yet drive. A hearing was fixed to allow reasonableness to be considered but the Respondents did not attend and put forward any evidence in this regard. They did not answer a Direction of the Tribunal but Mr Ito attended a WebEx practice but did not attend the Hearing and no response was received to an email sent to them that morning. This meant that the Tribunal was not aware of the Respondents' current circumstances as regards whether they had secured a property, or if Mrs Asong could now drive which might change their situation.

34. The Tribunal considered the evidence before it and was satisfied that the eviction ground had been made out and the Respondents had known of the Applicant's intention to sell since late in October 2022, some 18 months before the hearing took place. There was clear evidence that the property was actively being marketed and had been for some 10 months or so due to the Applicant selling all his property portfolio for personal reason. The Tribunal had no up to date information regarding the Respondents and whether their situation had changed. The Tribunal was satisfied that it was reasonable to grant the order based on the Applicant's apparent ongoing need to sell all of his let properties of which this is the last, and ongoing attempts to do that have been in place for many months. The Tribunal also took into account that the Applicant had tried to sell the property with the tenants in place and this had not been possible and the Respondents had been aware of the intention to sell for almost 18 months.

Decision

The Tribunal granted an eviction order in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Landlord Applicant is entitled to sell the let property and intends to sell the let property for market value within three months of the tenants ceasing to occupy it and it is reasonable on accounts of those facts to issue an eviction 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.

Valerie Bremner

Legal Member/Chair

24.4.24

Date