



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/23/4028

Re: Property at 24/1 Firrhill Drive, Edinburgh, EH13 9ET ("the Property")

Parties:

Mr Neil Edgar, 9 Tenth Street, Newtonrange, EH22 4JF ("the Applicant")

Miss Charlotte Wales, 24/1 Firrhill Drive, Edinburgh, EH13 9ET ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 16 April 2024, the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 2 August 2021.
- ii. The rent payable in terms of the PRT was initially £480 per calendar month.
- iii. On 11 April 2023, the Applicant served on the Respondent by recorded delivery post a Notice to Leave requiring the Respondent remove from

the Property by 11 October 2023 on the basis that the Applicant intends to sell the Property.

- iv. By letter dated 10 November 2023 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 which was posted by recorded delivery on 8 November 2023.
- v. The application is dated 10 November 2023.

The CMD

At the CMD the Applicant made the following additional oral representations:-

- i. The PRT commenced on 2 August 2021 and the PRT Agreement was signed on 3 August 2021.
- ii. The initial rent payable in terms of the PRT was £480.
- iii. No deposit was payable by the Respondent in terms of the PRT.
- iv. The Property was let on an unfurnished basis.
- v. The Respondent is the Applicant's ex-partner who continues to live in the Property with the parties' son who is aged 21 years and is in employment.
- vi. The Applicant is still not registered as a Landlord.
- vii. There are no issues of disability affecting the Respondent or the parties' son.
- viii. Rent payable in respect of the Property is up to date.
- ix. The Applicant served on the Respondent by letter dated 11 April 2023 a Rent Increase Notice purporting to increase the rent payable to £700 per month. The Rent Increase Notice was served by Recorded Delivery along with the Notice to Leave. The Respondent voluntarily increased her rent to £495 per month with effect from 2 August 2023. The Applicant accepted his Rent Increase Notice did not take account of the restrictions on increasing rents at that time.
- x. The Notice to Leave sent by the Applicant to the Respondent by Recorded Delivery on 11 April 2023 had Part 4 thereof fully completed to include the date 11 October 2023. No supporting evidence was attached to the Notice to Leave. The Respondent did not react to receiving the Notice to Leave.
- xi. The Applicant messaged the Respondent as 11 October 2023 approached asking what was happening. She indicated she had spoken to the homelessness unit at City of Edinburgh Council and had been advised not to move out without an eviction order being granted as to do so would render her intentionally homeless.
- xii. The Applicant enjoys a good relationship with his son who is looking to move to his own accommodation or to share with a friend. He may move with the Respondent in the short term or could stay with the Applicant and his partner for a short period.
- xiii. The Applicant previously stayed in the Property as his own home until June 2021. At that point he moved in with his current partner. The mortgage over the property is in the Applicant's name.
- xiv. Under questioning from the Tribunal as to his reasons for wishing to sell the Property now, the Applicant stated that he will be 57 years of age this year. He is employed as a Project Development Manager with a housing association dealing with new builds. He is looking to retire within the next couple of years. He lives

with his partner in her property and wishes to realise his assets for his impending retirement. He has no intention of moving back to the Property and has no intention of renting the Property out again. He has never previously rented any properties and has no other rented properties.

- xv. The Applicant's mortgage over the Property is currently payable at £420 per month. However, this payment is based on a fixed interest rate which has just ended and he is moving over to a variable rate from 1 April and expects to pay at least £600 per month going forwards. The mortgage is with the Natwest and has 7 years left to run.
- xvi. There is the potential for redundancy over the next 2 or 3 years. He has been employed in housing for 17 years and is considering his pension arrangements too.
- xvii. The Property was purchased for £91,657 and the Applicant has since spent around £10,000 on improvements. He believes the property is worth around £120,000 to £130,000 on the open market. There is around £34,000 left on the mortgage to pay.
- xviii. The Property consists of a ground floor flat with 2 bedrooms, a garden to the front and a shared garden to the back.
- xix. The Applicant has had no recent contact with the surveyor at Shepherds with regard to the Home Report or with McDougall McQueen with regard to a sale. The Applicant did not consider it appropriate to get in touch again until the current proceedings had resolved.
- xx. The Applicant has no health issues.
- xxi. The last contact between the Applicant and the Respondent was the exchange of messages just prior to 11 October 2023 referred to above. At that time the Respondent indicated she could go and stay with her Mum but that has not happened. The Applicant believes the Respondent is on the waiting list for housing with both City of Edinburgh Council and Midlothian Council within which area her Mum stays.
- xxii. The Applicant seeks an eviction order.

Findings in Fact

The Tribunal makes the following findings in fact:-

- i. The Applicant leased the Property to the Respondent in terms of the PRT.
- ii. The PRT commenced on 2 August 2021.
- iii. The Property was let on an unfurnished basis.
- vi. The rent payable in terms of the PRT was initially £480 per calendar month.
- vii. No deposit was paid.
- viii. The Applicant is not registered with City of Edinburgh Council as a landlord.
- ix. The Respondent is the Applicant's ex-partner who lives in the Property with their 21 year old son who is in employment.
- x. Rent payable in respect of the Property is up to date.
- xi. The Respondent voluntarily increased her rent to £495 per month with effect from 2 August 2023.
- xii. On 11 April 2023, the Applicant served on the Respondent by recorded delivery post a Notice to Leave requiring the Respondent remove from the Property by 11 October 2023 on the basis that the Applicant intends to sell the Property. No supporting evidence was attached to the Notice to Leave.

- xiii. The Applicant messaged the Respondent as 11 October 2023 approached asking what was happening. She indicated she had spoken to the homelessness unit at City of Edinburgh Council and had been advised not to move out without an eviction order being granted as to do so would render her intentionally homeless.
- xiv. The Applicant enjoys a good relationship with his son who is looking to move to his own accommodation or to share with a friend. He may move with the Respondent in the short term or could stay with the Applicant and his partner for a short period.
- xv. The Applicant previously stayed in the Property as his own home until June 2021. At that point he moved in with his current partner. The mortgage over the property is in the Applicant's name.
- xvi. By letter dated 10 November 2023 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 which was posted by recorded delivery on 8 November 2023.
- xvii. The Applicant will be 57 years of age this year.
- xviii. The Applicant is employed as a Project Development Manager with a housing association dealing with new builds.
- xix. The Applicant is looking to retire within the next couple of years. There is also the possibility of redundancy from his employment.
- xx. The Applicant lives with his partner in her property and wishes to realise his assets for his impending retirement.
The Applicant has no intention of moving back to the Property and has no intention of renting the Property out again. He has never previously rented any properties and has no other rented properties.
- xxi. The Applicant's mortgage over the Property is currently payable at £420 per month. However, this payment is based on a fixed interest rate which has just ended and he is moving over to a variable rate from 1 April and expects to pay at least £600 per month going forwards. The mortgage is with Natwest bank and has 7 years left to run.
- xxii. The Property was purchased for £91,657 and the Applicant has since spent around £10,000 on improvements. He believes the property is worth around £120,000 to £130,000 on the open market. There is around £34,000 left on the mortgage to pay.
- xxiii. The Property consists of a ground floor flat with 2 bedrooms, a garden to the front and a shared garden to the back.
- xxiv. The Applicant is entitled to sell the Property.
- xxv. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondent and the parties' son ceasing to occupy it.
- xxvi. It is reasonable to issue an eviction order.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers orally at the CMD was not challenged and was accepted by the Tribunal.

The application proceeds upon ground 1 of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(1) 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."*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires 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. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon an exchange of emails with Chris Weir of Shepherds Chartered Surveyors dated 17 October 2023 with regard to the preparation of a Home Report in respect of the Property and a price quotation for estate agency and conveyancing costs associated with a sale of the Property provided by McDougall McQueen and dated 19 October 2023. The Tribunal accepts these documents as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account:-

- i. That the Applicant is not and never has been a commercial landlord. The Property was previously his own home. The Applicant will never move back into the property nor has he any desire to rent it out again.
- ii. The Applicant is almost 57 years of age. He is contemplating retirement within the next 2 to 3 years and the possibility of redundancy also exists. He wishes to make plans for that and realise assets. There is approximately £85,000 to £95,000 of equity in the Property.
- iii. The mortgage over the Property payable to Nat West has reached the end of its 3 year fixed period. The last payment in terms of that arrangement was £480 on 2 April

2024 and future payments will be at a variable rate anticipated by the Applicant to be at least £600 per month.

- iv. The Respondent appears to have taken steps to secure local authority accommodation. The granting of an eviction order may assist her in being offered such accommodation.

There were no submissions from the Respondent relative to reasonableness and the Tribunal accepted the Applicant's stated position. In these circumstances it is reasonable to issue an eviction order.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.

Gillian Buchanan

Legal Member/Chair

17 April 2024

Date