



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

Chamber Ref: FTS/HPC/EV/24/0314

Re: Property at 11 Oxfangs House, Edinburgh, EH13 9HE (“the Property”)

Parties:

Mr Mohammed Abrar, 143 Glasgow Road, East Kilbride, G74 4QA (“the Applicant”)

Mr Jamie Hicks, Miss Jessica Brandon, 11 Oxfangs House, Edinburgh, EH13 9HE (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)

Decision

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

BACKGROUND

1. It was a matter of agreement between the parties that a private residential tenancy existed between the parties. The actual tenancy agreement, however, was not provided to the Tribunal.
2. The property has asbestos within it and this needs to be removed. This work is to be undertaken by Edinburgh City Council.
3. To enable the work to be undertaken Edinburgh City Council require to either purchase the Property from the Applicant, but require vacant possession of the Property thereafter, or, alternatively, the Applicant can make payment to Edinburgh City Council in the sum of £75,000.00 to enable them to undertake the work of his behalf.
4. The Applicant is not in a position to make payment of £75,000.00 to Edinburgh City Council. In the circumstances, he requires to accept

their offer to purchase the Property but requires vacant possession for that purpose.

5. There is no dispute between the parties in relation to the necessity of the work required to remove asbestos from the Property.
6. A notice to leave dated 25th August 2023 was served upon the Respondent.
7. A notice in terms of s11 of the Homelessness Etc. (Scotland) act 2003 was intimated to the local authority.

THE CASE MANAGEMENT DISCUSSION

8. All parties participated in the case management discussion personally.
9. The Applicant confirmed he was seeking an eviction order to enable him to sell the Property to the local authority.
10. The Respondent accepted the fact that the Property has asbestos within it and it needs to be removed. The work is being undertaken by the local authority. The local authority do require vacant possession of the Property. The Respondents were also aware of the options open to the Applicant, those being to sell the Property to the local authority or alternatively, to make payment in the sum of £75,000.00 to enable the local authority to do the work on his behalf.
11. In principle the Respondents did not oppose an order for eviction. Their position, however is that they would wish the date of enforcement to be deferred.
12. The Respondents explained their personal situation to the Tribunal. The Respondents lived together with their four year old son. The second Respondent is 7 months pregnant. She is due to give birth on 30th July 2024. The second Respondent has various health issues which affect her which result in her requiring support from other persons, including the first Respondent. In addition to the first Respondent, she has support from family who live locally and other support networks. As a result, the Respondents are keen to remain residing within the same locality when they remove themselves from the Property. In addition, their 4 year old will be starting school in August 2024. He is already enrolled in a local primary school and they do not wish to disrupt his schooling process at this stage.
13. The Respondents advised that they have been attempting to secure alternative accommodation. The information in relation to that, however, was neither clear nor consistent. A notice to leave was served during August 2023. The Respondents advised that they had been taking steps to secure alternative accommodation since then. Separately, the Tribunal was advised by them that they have been given advice that due to the “eviction ban” they should remain within the Property. The Applicant advised the Tribunal that he had provided

information to the Respondents about numerous properties which were available for rent in the locality. The Respondents advised that the provision of this information, from their point of view, amounted to harassment. When asked, however, whether any of the properties detailed to them were suitable, or any reasons why they were unsuitable, the Tribunal was advised, firstly, that the Respondents were unable to proceed with any enquiries as they did not have funds to use as a tenancy deposit. Separately, however, the Tribunal was advised that the Respondents had received advice that, due to the eviction ban, they should remain in the Property.

14. The Tribunal enquired as to any change in circumstances. If, earlier in the year, the Respondents were unable to progress an alternative tenancy as they did not have funds for a tenancy deposit, would the situation not still be the same now? Will that still not be a difficult for them? When discussing this matter Mr Hicks, the first Respondent left the proceedings, Miss Brandon remaining. The Tribunal confirmed that Mr Hicks had absented himself. He having done so, without explanation, in the course of the case management discussion, but Miss Brandon, the second name Respondent, still being present and participating, the Tribunal determined it was appropriate to proceed in the absence of Mr Hicks. Miss Brandon thereafter again confirmed that, earlier in the year, the Respondents did not have funds to pay a tenancy deposit on alternative accommodation. When asked about the current position, Miss Brandon's response was not entirely clear either. While suggesting that the position had perhaps changed, she made reference to a local authority requiring a tenancy deposit, which would be unusual. The Tribunal enquired as to whether a tenancy deposit had been paid for the current tenancy. Miss Brandon advised no. She had been given advice by another organisation to the effect that it was illegal for the Applicant to have granted a tenancy without a tenancy deposit haven been taken.
15. The Respondents advised the Tribunal that, from the information they had received from the supervisor of the works to remove asbestos, which had already commenced on a nearby block, the work at the Property was not likely to commence until September 2024. That information, however, was contradicted by the Applicant. He has previously provided the Tribunal with a letter from Edinburgh City Council, dated 8th April 2024, which advised that the local authority required the buy-back process to be complete before the asbestos works are due to be carried out at the end of July because they need residents to move out to allow the work to go ahead.
16. All Parties made allegations against one another which were not relevant to the issues to be determined by the Tribunal. Mr Abrar Referred to the fact that rent had not been paid for a period of time.

The Respondents advised that they had raised a repairing standards case with the Tribunal and, rather than rent not being paid, it had abated by 30% by virtue of an order of the Tribunal. The Respondents made reference to Mr Abrar harassing them and others. Mr Abrar Disputed those comments. Mr Abrar referred to the eviction ban, suggesting the ban had been “on and off” since it started, the suggestion being that the Respondents should not be relying on that for any reason. The Tribunal pointed out that, while there were clearly a number of issues between the parties, various ones raised were not of any relevance to the decision the Tribunal required to make in the current application.

17. Standing the position of the Parties, the only matter to be decided by the Tribunal was the effective date of any eviction order to be granted. While the Respondents were asking for any eviction date to be deferred to allow them sufficient time to secure suitable alternative accommodation within the locality of the Property, the Tribunal concluded that it was not appropriate to defer the date on which any eviction could be enforced beyond the normal timescales. If an order for eviction was to be granted, it cannot be enforced until at least 30 days after the decision is intimated to the Parties. That being so, any eviction order granted would not be able to be enforced until, at the earliest, 23rd June 2024. If the Tribunal deferred enforcement until the end of July, that is likely to coincide with a period in time when the second Respondent would either have very recently given birth or the birth of a child would be imminent. An eviction being enforced at that stage is likely to cause unnecessary stress to the Respondents and their family unit. Similarly, if the eviction was to be deferred until the end of August, it is likely at that stage the Respondents would be parents of a very young child and also a child who was just starting school. An eviction at that time would cause difficulties for the Respondents for different reasons. Separately, deferring the date of eviction was likely to cause a delay in the removal of the asbestos within the Property. While the Respondents were suggesting that they had received information to the effect that the work would not be started until September, that information comes to come for a site supervisor working near to the Property. The information from Edinburgh City Council, who are responsible for instructing the works, is that the works are expected to commence at the end of July.
18. In the circumstances, the Tribunal concluded that an eviction order should be granted – the principle of an eviction order was not in dispute – and that the date of enforcement, if necessary, would be 1st July 2024.

FINDINGS IN FACT

19. The Tribunal found the following facts to be established: -
- a) The Applicant is the landlord of the Property. The Respondents are tenants of the Property.
 - b) On 25th August 2023 a notice to leave was served upon the Respondents intimating that the Applicant required vacant possession as he intended to sell the Property.
 - c) A notice in terms of s11 of the Homelessness Etc. (Scotland) act 2003 was intimated to the local authority.
 - d) The Property has asbestos within it. It is necessary that work is undertaken to remove the asbestos. The work involved is significant and will require the Property to be vacant while it is done.
 - e) Edinburgh City Council are undertaking the work to remove asbestos. They require, either to purchase the Property from the Applicant with the vacant possession, or, alternatively, require the Applicant to make payment to them in the sum of £75,000.00 for the work to be undertaken on his behalf.
 - f) The Applicant is not in a position to make payment to Edinburgh City Council in the sum of £75,000.00. In the circumstances, he requires to accept the offer to buy the Property.
 - g) It is the intention of the Applicant to sell the Property to Edinburgh City Council. Vacant possession is required for him to do so.

REASONS FOR DECISION

20. The grant of an eviction order was not a matter of dispute between the parties. It was a matter of agreement that the Property has asbestos within it, that this asbestos had to be removed, that the work required to remove it is extensive and that the Property will require to be vacant for the work to be undertaken by Edinburgh City Council.
21. The Applicant requires to sell the Property to Edinburgh City Council to enable the work to proceed. Vacant possession is required for that. In the circumstances, as stated, an eviction order requires to be granted.
22. The only issue for the termination by the Tribunal is the date upon which any eviction order may be enforced. The Tribunal was provided with conflicting information as to when the work was likely to commence. The work is being instructed by and undertaken by Edinburgh City Council. The Tribunal was provided with a letter dated 8th April 2024, from Edinburgh City Council to the Applicant, confirming that the intention is to commence the work at the end of

July. Edinburgh City Council require the purchase process to be completed by then and require vacant possession. The Respondents, however, say they had received information from the site supervisor to the effect that the work would not be undertaken until September. While there was a conflict between the parties in relation to the intended date of commencement of the work, the information available to the Tribunal, provided in correspondence from Edinburgh City Council, was clear that the intention is to commence the work at the end of July. In the circumstances the Tribunal considered it appropriate that the date upon which any order for eviction could be enforced be on a date which would enable sufficient time for the sale process to be completed and for the Respondents to vacate the premises in observance of the eviction order.

23. Separately, while the Respondents were inviting the Tribunal to defer the date of the eviction order, having regard to the fact that second Respondent is pregnant and due to give birth on 30th July 2024, and, separately, that the four year old child of the Respondents is due to start primary school during August 2024, deferring the date of enforcement was likely to cause difficulties for other reasons. If the date was deferred until the end of July, it is likely that the Respondents would either have a child who was only days old, or alternatively, that the birth of the child was imminent. In either situation, having an eviction enforced at that stage would only cause upset and stress to the Respondents and their family unit. Similarly, if the date of enforcement was to be deferred until the end of August, the Respondents at that stage are likely to be the parents of a very young child, with a second child having just commenced primary school. Again, the disruption caused by an eviction at that stage is likely to be significant to the family unit.
24. Again, separately, deferring the eviction from the information available to the Tribunal about the proposed date of the commencement of works, may cause a difficulty and delay in the removal of asbestos work being undertaken at the Property.
25. In all the circumstances, the Tribunal considered that it was appropriate to grant an eviction order with an enforcement date on 1st July 2024.

DECISION

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

Order not to be executed prior to 12 noon on 1st July 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.



V.Crawford

Legal Member/Chair

24 May 2024

Date