



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/24/0495

Re: Property at 1/8 Inglis Green Rigg, Edinburgh, EH14 2LF (“the Property”)

Parties:

Elaine May, Andrew May, 24 Pullar Avenue, Bridge of Allan, Stirling, FK9 4SJ (“the Applicants”)

Joern Pfaff, Anouck Garenaux, 1/8 Inglis Green Rigg, Edinburgh, EH14 2LF (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondents from the property but postponed until 18 September 2024.

Background

1. By application dated 31 January 2024 the Applicants’ representatives, Bannatyne Kirkwood France & Co, solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the Respondents from the property under ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants’ representatives submitted a copy of a tenancy agreement, Notice to Leave with proof of service, Section 11 Notice and email, and a sales agreement with Clyde Property in support of the application.
2. By notice of Acceptance dated 1 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 18 April 2024.
4. By email dated 29 April 2024 the First Respondent submitted written representations to the Tribunal.
5. By email dated 16 May 2024 the Applicants' representatives submitted an updated rent statement to the Tribunal.

The Case Management Discussion

6. A Case Management Discussion ("CMD") was held by teleconference on 30 May 2024. The Applicants attended in person and were represented by Ms Wooley from Bannatyne Kirkwood France & Co, Glasgow. The First Respondent attended in person. The Second Respondent did not attend.
7. After explaining to the parties the purpose of a CMD the Tribunal noted that the Second Respondent was no longer residing at the property and that the First Respondent did not know where the Second Respondent was living. The First Respondent said the First Respondent's papers were still at the property after being given to him by the Sheriff Officers.
8. The Tribunal queried with Ms Wooley if the Applicants had been aware that the Second Respondent had moved out of the property and was advised that they had been unaware until they received the First Respondent's written representations. Ms Wooley said that as the Second Respondent had not advised the Applicants of a change of address the Notices and case papers had been properly served. The Tribunal determined to proceed in the absence of the Second Respondent.
9. The Tribunal ascertained from the parties that it was agreed that the Tenancy commenced on 28 May 2019 at a rent of £895.00 per calendar month and that the rent had increased in July 2022 to £958.35 per month and again increased in August 2023 to £987.51. It was also agreed that the Respondents had been served with a Notice to Leave by emails dated 17 October 2023 under Ground 1 of Schedule 3 of the 2016 Act and that Edinburgh City Council had been given notice of the proceedings by way of a Section 11 Notice sent by email by the Applicants' representatives on 31 January 2024.
10. Ms Wooley advised the Tribunal that both Applicants were of retiral age and were in the process of selling off their small portfolio of rental properties. She also advised the Tribunal that the First Applicant had health problems and that the current applications were causing him anxiety. The Second Applicant went on to say that her husband suffered from COPD and diabetes and had recently had treatment for these. She said that the Applicants had four rental properties one of which was currently in the process of being sold. The Second Applicant said that the Applicants needed to know the outcome of the current application

before continuing with the disposal of the remaining two properties but it was their intention to sell them in due course.

11. The First Respondent said he was a single parent with four children, twins aged 4 and two children aged 9 and 10. He said that the twins attended nursery locally and the older children attended a local school. The First Respondent said that he did not do much work as there was not much time left looking after four children. He said that he had applied for but was not in receipt of Universal Credit. He accepted he had rent arrears but not as much as was claimed by the Applicants. The First Respondent said that he had a meeting arranged with the local authority homeless unit the following week but he did not want his family to be placed in homeless accommodation. The First Respondent said that he did not want to remain in the property as the Applicants were unwilling to fix the outstanding repairs but needed time to find alternative accommodation. Because of the children's schooling and the difficulty in finding suitable accommodation the First Respondent said he required more time to find somewhere else to live but that he would agree to move out by 1 October 2024.
12. For the Applicants Ms Wooley said that the Respondents had since last summer to find alternative accommodation. She said that with four young children the local authority would give the First Respondent priority for housing.
13. After a short adjournment to allow Ms Wooley to take instructions from her clients on the First Respondents offer to move out by 1 October, Ms Wooley offered a compromise date of 1 August 2024. The First Respondent said that because of the school summer holidays and the difficulty of finding property during the Edinburgh Festival that date was unacceptable.
14. After some further discussion around whether to adjourn the proceedings to a hearing on reasonableness Ms Wooley confirmed that she and her clients would prefer the Tribunal to make a decision without a hearing and left it to the Tribunal to determine an appropriate date for the tenancy to end.

Findings in Fact

15. The parties entered into a Private Residential Tenancy that commenced on 28 May 2019 at a rent of £895.00 per calendar month.
16. The current rent is £987.51 per month.
17. The Applicants have a small portfolio of 4 rental properties that they wish to sell as they are of retiral age and the First Applicant has health issues.
18. The Applicants have entered into a sales agreement with Clyde properties to sell the property once they have vacant possession.
19. The Respondents were served with Notices to Leave under Ground 1 of Schedule 3 of the 2016 Act by emails dated 17 October 2023.

20. Edinburgh City Council was given notice of the proceedings by way of a Section 11 Notice sent by email on 31 January 2024.
21. The First Respondent is a single parent with four children living in the property with him, twins aged four and two other children aged nine and ten.
22. The children attend a local nursery and school.
23. The Respondents have accrued rent arrears although the actual amount is disputed.
24. The First Respondent has arranged to meet with the local authority homeless unit in the next week.
25. The First Respondent has offered to remove from the property by no later than 1 October 2024.
26. The Applicants have offered to let the Respondents remain in the property until 1 August 2024.
27. The Second Respondent moved out of the property in February 2022 and has played no part in the proceedings.

Reasons for Decision

28. The Tribunal was satisfied from the oral submissions of the parties and Ms Wooley together with the documents submitted that the parties entered into a Private Residential Tenancy that commenced on 28 May 2019. The Tribunal was also satisfied that because of their age and the First Applicants health it was the Applicants intention to dispose of their portfolio of four properties and that they intended to sell the property with vacant possession. The tribunal was satisfied that valid Notices to Leave had been served on the Respondents and that proper intimation had been given to the local authority.
29. The Tribunal therefore had to determine if it was reasonable in the circumstances to grant the order sought. In reaching its decision the Tribunal took account of the fact that the Second Respondent had moved out of the property in February 2022 and had no contact with the first Respondent and was therefore unlikely to take an interest in the proceedings. The Tribunal also took account of the fact that the First Respondent had four young children living with him who were settled at the local nursery and school and that it might be difficult to find suitable alternative accommodation. However, the First Respondent did not consider the property to be suitable and wished to move as long as he was given adequate time. He was also taking steps to seek assistance from the local authority homeless unit and as Ms Wooley pointed out, with four young children he ought to receive some priority to be rehoused if an order for eviction is granted. The Tribunal in reaching its decision considered the circumstances of the Applicants and in particular the fact that they had reached retiral age and wished to sell off their portfolio and pay off the

secured loans particularly as the First Applicant was not in good health. Taking everything into account the Tribunal was satisfied that it was reasonable to grant the order but that enforcement should be postponed to allow the First Respondent time to find alternative accommodation and that an appropriate date would be 18 September 2024.

Decision

30. The Tribunal being satisfied that it had sufficient information before it to make a decision without the need for a hearing finds the Applicants entitled to an order for the eviction of the Respondents from the property but with enforcement of the order postponed until 18 September 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.

Graham Harding
Legal Member/Chair

30 May 2024
Date