



**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/23/2107**

**Re: Property at 126/9 Saint Stephen Street, Edinburgh, Scotland, EH3 5AD (“the Property”)**

**Parties:**

**Mr Andrew Fournet, 50 Freelands Road, Edinburgh, Scotland, EH28 8NW (“the Applicant”)**

**Mr Maciej Zurawski, 126/9 Saint Stephen Street, Edinburgh, Scotland, EH3 5AD (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted, and that the private residential tenancy between the parties shall end on 7 June 2024.**

**Statement of Reasons**

1. This Application called for its Hearing by teleconference call on 7 May 2024. The Applicant was personally present on the call. The Respondent was neither present nor represented.
2. In this Application the Applicant seeks an eviction order. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy. The Applicant founds upon ground 1 for eviction, which is that he intends to sell the Property.
3. The Application previously called for a Case Management Discussion on 26 January 2024. The Respondent appeared at the CMD, and indicated that he

wished to challenge the reasonableness of granting an eviction order. In particular, he wished to claim that it was unnecessary to evict him in order for the Property to be sold. There was no dispute arising out the terms of the Notice to Leave given by the Applicant to the Respondent, or of the Applicant's intention to sell. In light of the Respondent's position, the Tribunal fixed an Hearing on evidence to determine whether it was reasonable to grant an eviction order, which is the purpose of the Hearing.

4. In light of the previous procedure, it was surprising that the Respondent chose not to attend. However, the Tribunal is empowered by Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 to proceed with a Hearing in the absence of one of the parties, and may proceed with the application upon the representations of any party present and all the material before it. The Tribunal was therefore content to proceed.
5. The Applicant spoke of going through a divorce from his wife. He had previously said, at the CMD, that the sale of the Property and subsequent division of proceeds forms part of his separation agreement. The Applicant spoke of having to evict the Respondent in order to sell the Property. In advance of the Hearing, the Applicant had lodged a letter from Murray & Currie Property, who he had engaged to market the Property. The Applicant relied upon that letter, which confirmed that the Property had been marketed for 7 months whilst the Respondent remained in the Property, but without any offers received. All interest in the Property appeared to disappear when a commitment could not be given for a timescale for the Respondent to remove. The opinion of the estate agent was that the Respondent's continued occupation was deterring potential purchasers.
6. The Property is a one bedroom apartment in Edinburgh City Centre. It is on the third floor. It has not been adapted in any way for the Respondent's use. To the best of the Applicant's knowledge, the Respondent lives alone and does not access any local specialist services. The Respondent has, however, registered the Property as his business address in breach of his tenancy obligations. The Respondent has also caused damage inside the Property.
7. The Respondent is in rent arrears of £7,957.24. The Applicant said that he is suffering some minor financial difficulty due to the Respondent's failure to pay. The Respondent has repeatedly stated an intention to move out of the Property, but he is still resident there.
8. The Respondent's position was as set out at the CMD. He is a self-employed software developer. He principally works from home. He does not access local specialist services. He believes that the Property can be sold with a sitting tenant, but offers no independent or skilled evidence to support that belief. He previously accepted that he was in rent arrears, but that he intended to have those cleared prior to the Hearing. He has failed to do so.
9. The only question for the Tribunal to determine is whether it is reasonable to grant an eviction order. The Tribunal cannot grant the order for eviction unless

it is able to do so. In determining whether it is reasonable, the Tribunal has “a judicial duty to consider the whole of the circumstances in which the application is made” (*Barclay v Hannah*, 1947 S.C. 245, per Lord Moncrieff at page 249). Having done so, the Tribunal is satisfied that it is reasonable to grant the eviction order. It is clear that the Applicant has not been able to sell the Property with the Respondent as a sitting tenant, despite professional efforts to do so. The Respondent is in rent arrears, and has damaged the Property. The Respondent works from home, and therefore can effectively work wherever “home” is. He is not tied to the Property, which has not been set up for his use. In light of all that the Tribunal has heard, the balance heavily favours granting the eviction order. The Tribunal will do so.

10. For the purposes of section 51(4) of the 2016 Act, the PRT will terminate on 7 June 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.**

# Andrew Upton

Legal Member/Chair

**7<sup>th</sup> May 2024**  
**Date**