



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ref: FTS/HPC/EV/24/1124

Re: Property at 36/7 Restalrig Drive, Edinburgh, EH7 6JF (“the Property”)

Parties:

Mr John McGlade and Mrs Elaine Glade, 20 Duddingston Park, Edinburgh, EH15 1JX (“the Applicant”)

Mr Imran Farooqi, 36/7 Restalrig Drive, Edinburgh, EH7 6JF (“the Respondent”)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Mr Gerard Darroch (Ordinary Member)**

Decision

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

(1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicant landlord intends to sell the let Property for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act; and deferred the date of execution of the order to 20 September 2024.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants made an application to the tribunal on 5 March 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).
2. The Applicant provided the following documents in support of the Application:
 - 2.1. Notice to Leave dated 27 November 2023, with proof of service;
 - 2.2. Letter from solicitor dated 4 April 2023 confirming that they will act for the Applicants in the sale of the Property;
 - 2.3. Section 11 notice to local authority and proof of service;
 - 2.4. Private Residential Tenancy Agreement.
3. The tribunal’s administration obtained a copy of the Title Sheet for the Property which showed the Applicants have been the registered proprietors of the Property since 12 August 2011.
4. On 28 March 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application on 24 July 2024 by teleconference at 1000h. The Application paperwork was personally served on the Respondent by Sheriff Officers. The Respondent was told that if he wished to submit written representations these should be sent to the tribunal by 5 July 2024.
5. On 5 July 2024 the Respondent submitted written representations opposing the eviction application, which failing requesting a deferred period for execution to allow him to find alternative accommodation. He also submitted documents, including a GP letter, information about universal credit, emails with a housing adviser and information about local authority and Edindex applications for housing.

CMD: 24 July 2024, 1000h, Teleconference

6. Mr and Mrs McGlade, the Applicants, attended.
7. Mr Farooqi, the Respondent, attended.
8. I explained the nature and purpose of the CMD.

9. Mr Farooqi confirmed that he was opposing the application for eviction or asking for a deferral to the execution date to allow additional time for him to find accommodation.
10. Mr Farooqi accepted that the notice to leave had been served in November 2023 and that previous notices had been served and withdrawn earlier in 2023. Mr Farooqi said that since he received the notice to leave he has been looking for another property and that unfortunately during that time, he could not find any affordable property as there were very few on the market. He has been unable to get a viewing of a property. Mostly he applied for the private properties. He also applied for local authority housing. He said that he does not have enough points. He said that his current circumstances are very difficult. He has spoken to a housing officer at the local authority. If an eviction order is made they have said to him that most likely he would be put in a higher priority group. He has applied outside Edinburgh, to Fife for housing. Even there he was not able to get into the viewing list. He only went for one property. Unfortunately his application was not accepted. The housing adviser told him that if he was made homeless he would be provided with temporary accommodation. With Edindex, he currently does not have many points to qualify and was told that if he gets evicted he will get higher priority.
11. Mr Farooqi said that he has lived in the property since 2019, when he was a student. In 2022, his adult son moved into the Property with him. He is 21 years old and has additional support needs. Mr Farooqi said that he received Universal credit and that the accommodation component entirely pays the rent for the Property.
12. Mr Farooqi asked the tribunal to defer the eviction order for 3 months. He referred to his medical circumstances. He said that he suffers from depression and it is very difficult to move home. He also referred to his adult son and his additional support needs.
13. Mr McGlade said that he and his wife are 67 and want to sell the property to fund their retirement. They have been seeking to get vacant possession of the Property since they gave a notice on 30 March last year. He would have hoped that was sufficient time for the respondent to find alternative accommodation as it was 15 months ago. The notice to leave which is relied upon was served in November 2023.
14. Mr McGlade said that he had been unaware of Mr Farooqi's current circumstances until the Respondent submitted his representations to the tribunal. When they accepted Mr Farooqi's application as a tenant in 2019, it was because he provided information that he was doing a 4 year degree at Edinburgh university. He had a

bursary and his brother was a guarantor. That all seemed fine at the time. In the last month they have found out that he has only completed one year at University. He has just confirmed on this call that he is being funded by the council.

15. Mr McGlade said that they would not be happy to sell the Property with the Respondent in it as a sitting tenant because selling it in such a condition blights the value. The rent is below market value for rents in the area. The rent is currently £836 per month and that typically in the area they are £1100 to £1200 for a similar property. That would be taken into account by any third party. The discussions the Applicants have had with their solicitor about selling the Property are to sell with vacant possession.
16. The Applicants have one other rental property which is closer to where they live just now. It is a bigger house and they are keeping their options open as they may downsize to that property.
17. The Applicants would prefer the 30 day statutory period for enforcement. They are opposed to an extension. Mr McGlade said that this is not a personal issue. He and his wife and just want to take a bit more control of things and sell the Property at the best time. If they give an extra two months that would take them to October which would leave them selling the property over the winter which is probably the worst time to be doing that. With the one month period they could still sell summer or early autumn. He anticipates that there will be some work to do to get the house ready for sale which would mean it would be Christmas time when it is presented to the market. Mr McGlade said that the Respondent has already had months since the notice to leave was served and it is not clear what help three more months is going to give.
18. Mr McGlade said that there is no mortgage on the Property and he confirmed that the rent has been kept up to date.
19. In response, Mr Farooqi said that he tried his best to get another property since notice was served. He referred to the eviction ban and the rent cap. He said that it was not easy to go and find a property when rent was sky rocketing and that the chances were very slim for him to get anything he applied for. He also said that he had completed two years of his degree and had taken an authorised interruption from study from University. He said that he would like to settle down and complete his degree.
20. The tribunal adjourned to consider the Application.

21. The tribunal makes the following findings-in-fact:

- 21.1. The Applicants are the registered proprietors of the Property.
- 21.2. There is a private residential tenancy agreement between the Applicants and the Respondent for the Property which started on 7 August 2019.
- 21.3. On 27 November 2023, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondent.
- 21.4. The Applicants have given the Respondent at least 84 days' notice that they require possession.
- 21.5. The Application to the tribunal was made on 5 March 2024.
- 21.6. The Applicants intend to sell the Property on the open market or at least market it for sale within three months of vacant possession.
- 21.7. The Applicants are 67 years old and wish to sell the Property to fund their retirement.
- 21.8. The Respondent's tenancy is a sole tenancy.
- 21.9. The Respondent's adult son has lived in the Property with him since 2022.
- 21.10. The Respondent is in receipt of Universal Credit with a component for accommodation.
- 21.11. The Respondent intends to seek either alternative local authority housing, social housing or private housing.
- 21.12. The Respondent's priority status for alternative accommodation is likely to be increased if the eviction order is made.

22. Findings in fact and law

- 22.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.
- 22.2. The tribunal is satisfied that it is reasonable to make an order for eviction but considers that it is reasonable to defer the date of execution of the order

by an additional 28 days in addition to the statutory appeal period, to allow the Respondent additional time to seek alternative accommodation.

Discussion

23. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

24. In relation to reasonableness, reference is made to the tribunal's findings in fact. In particular, the Respondent has made applications for local authority housing and social housing but has been unsuccessful to date. He has been told that his priority status will improve if there is an eviction order.

25. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case but considered that it was also reasonable to defer execution by an additional 28 days in addition to the statutory appeal period. Execution will be deferred to 20 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.

24 July 2024

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair