



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/1605

Re: Property at 8 Barley Bree Lane, Easthouses, Dalkeith, EH22 4UD (“the Property”)

Parties:

Melville Property Limited, 5 South Gyle Crescent Lane, Edinburgh, EH12 9EG (“the Applicant”)

Mr David Jeffries, Mrs Shona Jeffries, 8 Barley Bree Lane, Easthouses, Dalkeith, EH22 4UD (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 9 April 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the notification to the local authority in terms of Section 11 of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in

support of the ground, namely a communication/quotation from an estate agent confirming their instruction to market the Property for sale in due course.

2. Following initial procedure, on 31 May 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 2 October 2024 was served on the Respondent by way of Sheriff Officer on 23 August 2024. In terms of said notification, the Respondent was invited to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.
4. On 11 September 2024, the Applicant’s representative emailed the Tribunal with further supporting information, including messages between one of the Respondents and the Applicant’s letting agent; a recent email and letter from the letting agent to the Respondent regarding rent arrears; and a letter from the mortgage lender regarding the circumstances of the Applicant’s intended sale of the Property.

Case Management Discussion

5. A Case Management Discussion (“CMD”) took place by telephone conference call on 2 October 2024 at 2pm, attended only by the Applicant’s representative, Mr Correy Webber, Trainee Solicitor, of Ennova Law. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained. There followed discussion regarding the eviction application and Mr Webber also answered a number of questions from the Tribunal Members. He indicated that the only communication from the Respondent in connection with the eviction application was that lodged on behalf of the Applicant on 11 September 2024, being an email communication from Mr Jeffrey stating that, as they were being made homeless, they had been in contact with Edinburgh City Council who have told them that they will not be provided with housing assistance until an eviction order is granted. They were not, therefore, in a position to move out at the end of the notice period. Mr Webber referred to the fact that the Respondent did not appear to be opposing the application. He confirmed that there has been no further communication from the Respondent. Mr Webber does not know anything else regarding the personal circumstances of the Respondent, other than the letting agent believes there to be one other occupant of the Property, besides Mr and Mrs Jeffries.
7. Mr Webber confirmed that the Applicant intends to sell the Property. The position is that the Applicant has a property portfolio and that the decision was made to sell some of them, including this one, on the basis that there is an interest only mortgage over the Property with Bank of Scotland and in view of

interest rate rises, it is uneconomic to continue letting it out. Mr Webber does not know the exact number of properties in the Applicant's portfolio but confirmed that, in conjunction with the mortgage lender, the decision was made to sell this and at least one other property, for the financial reasons stated. Mr Webber also referred, in relation to the 'reasonableness' test to the substantial rent arrears which have accrued in respect of this Property since April 2024, following the service of the Notice to Leave, which now amount to around £11,000. No payments have been made by the Respondent since then. Mr Webber confirmed that there were no issues with the conduct of the tenancy, or payment of rent, until then. The Tribunal noted that the monthly rental is £1,400 and that arrears are continuing to accrue at that rate every month, whilst the mortgage payments are still having to be paid by the Applicant. Mr Webber confirmed that an eviction order is sought in order that vacant possession can be obtained, the Property sold and the outstanding mortgage redeemed.

8. The Tribunal considered the application and confirmed that the Tribunal would grant the eviction order sought on the basis that it was satisfied that the ground for eviction is met and that it is reasonable for the order to be granted. There was brief discussion regarding the issuing of the written decision and the process which would now follow. Mr Webber was thanked for his attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 August 2018.
3. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession.
4. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was sent by email to both Respondents on 9 January 2024, together with a covering communication explaining the circumstances on behalf of the Applicant.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 5 April 2024.
6. The Tribunal Application was submitted on 9 April 2024.
7. The Respondent remains in possession.
8. The rent due in respect of the Property is £1,400 per calendar month.
9. The Respondent stopped paying rent in April 2024, after Notice to Leave was served.

10. There are now substantial rent arrears owing of around £11,000.
11. There is an interest-only mortgage over the Property, in respect of which the mortgage payments have increased.
12. Rising mortgage costs was the reason the Applicant, in conjunction with the mortgage lender, decided to sell the Property.
13. The Applicant's financial circumstances have been negatively impacted by both the rising mortgage costs and the rent arrears.
14. The Respondent did not lodge any written representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation lodged with the application and subsequently, and the oral information provided at the CMD on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent, including a current valuation of the Property, and from the Applicant's mortgage lender confirming the lending situation and their involvement with the Applicant in deciding that the Property was to be sold. The Tribunal was satisfied that there was an intention to sell as soon as possible and that the Applicant's intention to sell is due to financial circumstances. The Tribunal noted that the Respondent stopped paying rent some months ago, after the Notice to Leave was served, that they have not engaged with the Applicant in respect of the arrears and that the arrears currently owing are significant. The Tribunal considered these factors to have a bearing on reasonableness. The Applicant's representative had addressed the Tribunal as to the background and current circumstances of the Respondent, as far as known to him, but this was limited due to the fact that the Respondent has not particularly engaged with the Applicant regarding either the eviction application or the rent arrears. The only communication from the Respondent after notice was served indicated simply that the Respondent was not in a position to move out of the Property as they would be homeless and

had been informed by the local authority that they would not receive assistance with housing until an eviction order had been granted against them. The Respondent was aware of the Tribunal proceedings and had chosen not to make any written representations nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.

4. The Tribunal did not have any material before it to contradict the Applicant's position, nor indicate that the Respondent was opposed to the eviction. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N Weir

Legal Member/Chair

2 October 2024
Date