



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/24/1793

Re: Property at 4/5 Meadowbank Terrace, Edinburgh, EH8 7AR (“the Property”)

Parties:

James Alastair Logan, Thomas William Cockayne, 29 Flat 10, King's Stables Road, Edinburgh, EH1 2AP (“the Applicants”)

Gatis Bojars, 4/5 Meadowbank Terrace, Edinburgh, EH8 7AR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 24 March 2021.
2. The application was dated 22 April 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 12 January 2024 and served upon the Respondent by email on that date as permitted by the Tenancy Agreement. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of

the notice restated that the Applicants sought to sell and referred to an attached email from a solicitor. The application papers contained an email from Wilsons Solicitors dated 11 January 2024 evidencing an instruction to the solicitor to sell the Property “subject to vacant possession”. The Notice to Leave intimated that an application to the Tribunal would not be made before 8 April 2024.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh Council on 22 April 2024 was included in the application papers.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 September 2024 at 10:00. We were addressed by the Applicants’ agent, Daniel Gray, paralegal, Gilson Gray, and by the Respondent. He was accompanied by his social worker as his supporter but the Respondent provided all submissions on his own behalf.
6. We sought confirmation from the Applicants’ agent that the application was still insisted upon, and sought confirmation from the Respondent as to his position. The Respondent made clear that he did not oppose eviction itself but wished more time due to his current medical and financial circumstances. We took both parties through the details of their respective positions.
7. In respect of the Applicants’ position:
 - a. The Applicants sought to discontinue letting the Property as it was no longer economic for them to be landlords, nor did they find the obligations of a landlord easy for them to undertake.
 - b. In regard to the financial issues, their current mortgage was an interest-only mortgage for which payments were currently £318/m. (We noted that the rent in the Tenancy Agreement was £500/m.) They made very little profit from renting the Property, and there was a constant potential for any profit (after tax) to be required to cover management or maintenance costs.
 - c. In regard to management, both Applicants had different medical conditions which made it difficult for each of them to manage the Property, and, in consideration of the second named Applicant’s medical conditions, he required to rely significantly on the first named Applicant to take forward any management. (The medical conditions were disclosed to the Tribunal and not disputed by the Respondent. We do not see a need to detail them here.) The Applicants had required to engage a letting agent to assist them. (We were not directly addressed on the economics of this, but we assume the costs of engaging a letting agent added to the Applicants’ consideration as to the strained economics of continuing to let the Property.)
 - d. In regard to specific issues relating to the Respondent, his medical conditions (referred to below) had been ongoing for some time and resulted in their own issues of management, such as complaints by neighbours about the Respondent’s behaviour.
8. In regard to his position, the Respondent provided the following information:

- a. He did not oppose eviction but wished for more time as he had not yet obtained alternative accommodation, and because of his current medical circumstances.
- b. He was in contact with the local authority on rehousing. He was assisted by his social worker in regard to this.
- c. He had not been in employment since January 2023 so was not in a position to obtain a new private tenancy as he had no savings to pay a deposit.
- d. On 13 June 2024, he was hospitalised for 2.5 weeks following a severe fall, the circumstances of which he cannot recall. He was treated for, and left with, serious injuries.
- e. After the fall he had: three fractures in his neck, both hands broken, two broken ribs, and surgery to remove his spleen.
- f. At present, he could use his hands but not fully (as he did not have proper grip strength). He was still wearing a collar and was told that his reliance on this would be decreased progressively.
- g. He had mental health issues for which he was seeking support and treatment. The fall had added to his mental health issues and, at present, he did not leave the Property and was anxious when in the street. He was currently receiving adult protection support.

In all the circumstances, the Respondent sought further time to vacate. We asked him for a specified position and he suggested a suspension of two or three months.

9. The Applicants' agent confirmed that he would take no issue with a suspension of three months. We confirmed again with the Respondent that he understood the implications of conceding eviction with a three-month suspension and provided him an opportunity to discuss matters with his social worker. He confirmed that he understood matters, did not wish time to discuss matters with his social worker, and was satisfied with an eviction order suspended for three months.
10. No motion for expenses was made by either party.

Findings in Fact

11. On 24 March 2021, the Applicants let the Property to the Respondent under a Private Residential Tenancy agreement with commencement on 24 March 2021 ("the Tenancy").
12. The Property is the Respondent's only or main residence and the Tenancy is thus a Private Residential Tenancy ("PRT").
13. On or around 12 January 2024, the Applicants' letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicants wished to sell the Property.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 8 April 2024.

15. Clause 3 of the Tenancy Agreement permitted service of a Notice to Leave by email.
16. A copy of the Notice to Leave was served on the Respondent by email to their designated email address in the Tenancy Agreement on 12 January 2024.
17. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 22 April 2024.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh Council on 22 April 2024.
19. On or about 11 January 2024 the Applicants instructed Wilsons Solicitors to act in a sale of the Property.
20. The Applicants wish to sell the Property with vacant possession in early course. They wish to discontinue acting as landlords due to financial considerations, and due to finding the management duties difficult to attend to due to their own medical circumstances.
21. The Respondent received emergency treatment and surgery on 13 June 2024 following a fall, and spent 2.5 weeks in hospital.
22. The Respondent continues to recover from the injuries sustained in the fall.
23. The Respondent is currently being treated for mental health conditions, which mental health conditions were exacerbated following the fall.
24. The Respondent is making active attempts to obtain alternative accommodation but has thus far failed to obtain a new public sector tenancy.
25. The Respondent is financial unable to obtain a new private sector tenancy.
26. On 15 August 2024, a Sheriff Officer acting for the Tribunal intimated the CMD of 17 September 2024 upon the Respondent.

Reasons for Decision

27. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
28. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the landlord intends to sell the let property.*

- (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
- (a) *is entitled to sell the let property,*
 - (b) *intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
- (a) *a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
 - (b) *a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

29. The email from Wilsons Solicitors constitutes sparse but sufficient evidence under paragraph (3), given the lack of opposition by the Respondent. On the basis of the submissions on behalf of the Applicants we agreed that paragraphs (2)(a) and (b) were also satisfied. In any event, the Respondent conceded that the material requirements of Ground 1 were satisfied.
30. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicants' reasons for wishing to sell, and they were not disputed by the Respondent. The Respondent's submissions on reasonableness raised significant issues but we were obliged to the Respondent for his straight-forward proposal, and to the Applicants' agent for his concession. In light of the Respondent's consent to an order subject to suspension and the Applicants' agreement to same, we were satisfied that the Applicants' reasons for seeking eviction were reasonable subject to an agreed suspension of three months.
31. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 18 December 2024.

Decision

32. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated above.

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 permMelanie Barbour

Joel Conn

17 September 2024

Legal Member/Chair

Date