



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/1251

Re: Property at 40 4f1 St Marys Street, Edinburgh, EH1 1SX (“the Property”)

Parties:

Mrs Kathleen Elgin, 6/4 St Vincent Street, Edinburgh, EH3 6SH (“the Applicant”) per her representatives, ESPC Lettings, 107, George Street, Edinburgh, EH2 3ES (“the Applicant’s Representatives”)

Ms Fiona Murphy, 40 4f1 St Marys Street, Edinburgh, EH1 1SX (“the Respondent”) per her representatives, CHAI (Community Help and Advice Initiative), 28, Westfield Avenue, Edinburgh, EH11 2QH (“the Respondent’s Representatives”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 13 March 2024 and 17 April 2024 (“the Application”), the Applicant’s Representatives applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 11 of

Schedule 3 to the 2016 Act that the tenant is in breach of the tenancy agreement.

2. The Application comprised the following:
 - i) copy private residential tenancy agreement beginning on 1 July 2023 between the Parties showing a monthly rent of £850.00;
 - ii) copy Notice to Leave in terms of Ground 11 of Schedule 3 to the Act dated 7 February 2024 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council being the relevant local authority;
 - iv) Copy tenancy inspection reports in respect of the Property dated 14 March 2023 and 22 November 2023;
 - v) Copy correspondence between the Application and the Applicant's Representatives in respect of the condition of the Property and lack of access for work to the windows in the Property;
 - vi) Copy correspondence between the Applicant's Representatives and the Respondent. in respect of the condition of the Property and lack of access for work to the windows in the Property

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 21 October 2024 at 14.00 by telephone conference. The CMD was intimated to both Parties.

CMD

4. The CMD took place on 21 October 2024 at 14.00 by telephone. The Applicant was not present and was represented by Ms. Lloyd of the Applicant's Representatives. The Respondent was not present and was represented by Mr. Wilson of the Respondent's Representatives.

5. The Tribunal explained the purpose of the CMD and the matters which it was bound to consider being that the Application complied with the Act, that the Ground is satisfied and that it is reasonable to grant the Order.

6. Ms. Lloyd confirmed that the Applicant sought an eviction Order.

7. Mr. Wilson advised that, having had a detailed consultation with the Respondent, her firm instructions are not to oppose the Application. He explained that she has been very stressed by the tenancy and has made contact with the local authority for alternative accommodation but cannot be treated as "homeless" unless and until an Order is granted. Mr. Wilson asked that, if granting the Order, the Tribunal might stay the Order for a longer period to allow the Respondent time to pursue a homelessness application with the local authority.

8. Ms. Lloyd advised that she had no specific instructions from the Applicant in respect of staying the Order.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties commencing on 1 July 2023;
 - ii) A Notice to Leave dated 7 February 2024 was issued on behalf of the Applicant to the Respondent citing breaches of the private residential tenancy as not taking reasonable care or keeping the Property clean; fixing items to the walls without consent; keeping a cat without consent and not allowing access to contractors to carry out window repairs ;
 - iii) The Respondent did not take reasonable care of the Property and did not keep the Property clean;
 - iv) The Respondent did not allow access to contractors to carry out window repairs;
 - v) The Respondent is in breach of the strict terms of the tenancy agreement;
 - vi) The Respondent does not oppose the Application;
 - vii) The Respondent has applied to the local authority for alternative accommodation;
 - viii) The local authority will not offer alternative accommodation without an eviction Order.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. Having found that the Respondent is in breach of the tenancy agreement, the Tribunal found that the eviction Ground has been met.
12. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussionincluding making a decision”*. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
13. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
14. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C.

245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

15. The Tribunal then looked to balance the rights and interests of both parties.
16. The Tribunal accepted that the Applicant is entitled to have the Respondent adhere strictly to her obligations to maintain the Property in good order and is entitled to access the Property to carry out her own maintenance. The Tribunal had regard to the fact that the Respondent does not dispute her failure to maintain the Property and that she wishes to remove from the Property. The Tribunal took the view that the current situation is not tenable or helpful for either Party in the longer term.
17. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent will have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
18. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
19. In the whole circumstances, the Tribunal stayed the Order coming into effect until 21 January 2025 to allow the local authority time to deal with the Respondent's homelessness application.
20. This decision is unanimous.

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.

Karen Moore

Legal Member/Chair

21 October 2024

Date