



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/2107

Re: Property at Flat 14, 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH (“the Property”)

Parties:

Pepper (UK) Limited, Harman House, 1 George Street, Uxbridge, London, UB8 1QQ (“the Applicant”)

Mr Jozsef Roland Bartalos, Flat 14, 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 5 November 2023 the Applicant’s representatives, Yuill and Kyle Ltd, Solicitors, Glasgow applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 2 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, Form BB, an Extract decree of possession and an occupancy report in support of the application.
2. By Notice of Acceptance dated 30 June 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 4 October 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 12 November 2024. The Applicant was represented by Mr Richard Taylor from Morton Fraser MacRoberts, Solicitors, as agents for the Applicant's representatives. The Respondent attended in person and was supported by Mr Frank Swanson.
5. At the commencement of the CMD the Tribunal ascertained from the Respondent that he was Hungarian and did not speak very good English and wished Mr Swanson to speak on his behalf.
6. Mr Taylor advised the Tribunal that the Applicant's agents had served a Form BB on the Respondent on 25 May 2023 as part of the Calling Up procedure raised against the Respondent's landlord, Richard Elby, and that an order for possession of the property had been granted by the Court on 24 October 2023 and an extract decree issued on 8 November 2023. Mr Taylor went on to say that a Notice to Leave had been served on the Respondent by email on 19 January 2024 giving notice that proceedings would be raised after 15 April 2024. Mr Taylor also advised the Tribunal that an occupancy report had been prepared by field agents and dated 19 April 2024 that confirmed that the Respondent continued to occupy the property. Mr Taylor advised the field agent had obtained limited details about the Respondent but had ascertained no-one else was living in the property.
7. Mr Taylor went on to say that the Applicant was looking for an order for eviction. He submitted that all the paperwork submitted was in proper order and that the Applicant had no facility for taking rent for the property and was not looking for rent to be paid. Mr Taylor explained that the Applicant was required to sell the property and was obliged to obtain the best possible price and that this could only be obtained by obtaining vacant possession and that the property would be difficult to sell with a tenant.
8. For the Respondent, Mr Swanson explained that the Respondent had received the various notices referred to by Mr Taylor and was not challenging their validity but that he had experienced some difficulty understanding their content due to his lack of English. Mr Swanson said that the Respondent had been worried that he would be evicted from the property on the day of the CMD. Mr Swanson went on to say that the Respondent's landlord had owned a number of flats in the same block as the Respondent's and some tenants had formed a forum although the Respondent had not joined. Mr Swanson went on to say that the Respondent had been told by a neighbour who was a member of the forum not to pay rent to the landlord's letting agents. Mr Swanson further

advised the Tribunal that the Respondent was not opposing the order sought but was looking for an extended period in order to find other accommodation. Mr Swanson confirmed that the Respondent was in employment and was actively looking for another property and was also in the course of applying for local authority housing. The Respondent confirmed he was employed by the local authority. He also explained that because his previous landlord was no longer trading it made it more difficult to obtain a new property. Mr Swanson asked the Tribunal to suspend enforcement of any order to the end of February 2025.

9. For the Applicant Mr Taylor said that if matters could be concluded at the CMD the Applicant would consent to enforcement being suspended until the end of February 2025.

Findings in Fact

10. The Respondent commenced a Private Residential tenancy of the property on 1 October 2021 at a rent of £825.00 per calendar month.
11. The Applicant initiated calling up procedures against the Respondent's landlord in May 2023 and obtained decree of possession of the property from Edinburgh Sheriff Court on 24 October 2023 and the decree was extracted on 8 November 2023.
12. As heritable creditor in possession the Applicant's agents served a Notice to Leave under Ground 2 of Schedule 3 of the 2016 Act on the Respondent by email on 19 January 2024.
13. The Applicant's representatives intimated the proceedings to Edinburgh City Council by way of a Section 11 Notice on 19 January 2024.
14. The Applicant obtained an occupancy report from a field agent dated 19 April 2024.
15. The Applicant has no facility to collect rent for the property.
16. The Applicant is obliged to obtain the best price for the property on its sale.
17. The property will be easier to sell and obtain a higher price with vacant possession.
18. The Respondent lives alone in the property.
19. The Respondent is Hungarian and has a limited understanding of English.

20. The Respondent is looking for alternative accommodation but requires additional time to find a suitable property.
21. The Respondent's search for another property has been hindered as a result of his landlord going out of business.
22. The Respondent does not oppose the granting of the order.
23. The Respondent is not paying any rent for the property.

Reasons for Decision

24. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 18 December 2018. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Edinburgh City Council by way of a Section 11 Notice.
25. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal took account of the fact that the Applicant was a heritable creditor in possession of the property and did not wish to be a landlord and intended to sell the property. The Tribunal was satisfied that the property would be easier to sell and more likely to sell for a higher price with vacant possession. The Tribunal also took account of the fact that the Respondent was not opposing the order being granted but was seeking a reasonable period in which to find alternative accommodation. After taking account of the disadvantage the Respondent had encountered due to his lack of understanding of English and given that the Applicant's representative was not opposed to the enforcement of any order being postponed until the end of February 2025 the Tribunal determined that it was reasonable to grant an order for the eviction of the Respondent from the property but that enforcement of the order should be postponed until 28 February 2025.

Decision

26. The Tribunal, being satisfied it had sufficient information before it to make a decision and the facts not being in dispute, determined that the Applicant was entitled to an order for the eviction of the Respondent from the property but that enforcement of the order be suspended until 28 February 2025.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**12 November 2024
Date**