



**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/23/4431**

**Re: Property at 80/3 Pitt Street, Newhaven, Edinburgh, EH6 4DB (“the Property”)**

**Parties:**

**Mr Alexander Corlett, 10 Breamwater Gardens, Richmond, Surrey, TW10 7SQ (“the Applicant”)**

**Mr Onyekach John Chendo, 80/3 Pitt Street, Newhaven, Edinburgh, EH6 4DB (“the Respondent”)**

**Tribunal Member:**

**Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application included: -
  - a. The application.
  - b. Tenancy agreement
  - c. Notice to leave, with sheriff officers' certificate of service.
  - d. Section 11 notice with sheriff officer's certificate of service.
  - e. Applicant further email of 14 May with solicitor's letter attached.
  - f. Respondent's email of 8 May with a letter attached.
  
2. The application called for a case management discussion on 28 May 2024. The applicant, Mr Corlett, his agent, Mr Paine and the respondent, Mr Chendo all attended. A note and direction were issued after that case management discussion and the matter proceeded to a hearing by telephone on 23 October 2024.
  
3. The applicant complied with the direction and submitted a number of further papers in support of his application. Namely,
  - a. Statement from applicant
  - b. Statement from applicant's parents
  - c. Rent ledger
  - d. Rent/expenditure document
  - e. Savings account balance.
  - f. Aviva pension document as proof of address
  - g. Shawbrook tax statement as further proof of address.
  - h. Companies House document.
  - i. Second Companies House document
  - j. Quotation from Wilson Ward Solicitors.
  
4. The respondent also complied with the direction and submitted a witness list and reference to a document that he had been offered a new property available in the autumn.
  
5. The applicant, the applicant's agent and the respondent all appeared at the hearing on 23 October 2024.

## Discussion

3. The applicant's agent advised that he was seeking an order for recovery of the possession of the property under ground 1 (intention to sell).
4. The respondent advised that he was not in a position to leave the property as he still had nowhere else to live. He was therefore still opposed to the order being granted at this time.
5. The applicant said that he was not a normal landlord, he had no second property. This was his only property. It was his first flat. He wants to sell it and use the proceeds for a deposit to buy his own property. His personal situation is affected by this application. A tenant only has to give 1 month's notice to leave, he has to give 3 months' notice, he did that. It had been 13 months now since he had instructed the notice to leave to be issued. He had not sought legal representation as he thought it was a fairly clear-cut case. He does not want to be a landlord any longer. He only renewed his landlord's licence as the tenant was still in the property, it had been due to expire in December 2023 and he had to renew it. He feels that the process has been going on for a long time. he needs to sell the property to access the proceeds for a deposit for a home for himself.
6. In addition, the tenant now has a small amount of arrears, and it feels as if the tenant can do what he wants.
7. He is living with his parents. His parents have written in to confirm this.
8. He also submitted evidence of his savings, and it shows he has limited savings. His savings are tied up in the property.
9. He has submitted documents to show that he has been a good landlord and complied with the regulations. He feels like he is being penalised.
10. He had only put the rent up once since the tenancy commenced. He thought this was another reason the tenant was in no rush to move, as the rent was cheap for the area. He was unimpressed that the respondent had refused to pay the rent increase refusing as he had been served with a notice to leave.
11. The respondent asked the applicant if he could give him until the end of the December to stay in the property, and he will leave the property then. The landlord advised that he would be prepared to allow the tenant to stay until the

end of December subject to being able to evict him after that date if he did not move then.

12. The applicant said that the rental for the property was significantly less than rents in that area, and it was therefore difficult for the respondent to find other flats in Leith.
13. The applicant advised that he had never lived in the property himself, he bought it because interest rates were low. He obtained a loan which he has repaid over time. He had hoped to sell the property and use it for a deposit to buy a property in London. London house prices are much higher than elsewhere. The free proceeds would go towards a property for himself. He has been living in London at his parents while he paid the loan off on the property. He is 36 years of age. He could only repay the loan on the property because he lived at his parents' home. The property was always to be an investment to provide him with a step to get him onto the property ladder. His plan is to use the free proceeds from the sale and a mortgage to purchase something for himself.
14. The Applicant's agent advised that he had originally served notice on the tenant. It was not until December 2023, a couple of days before they could raise proceedings that the tenant advised that he was not going to vacate. He said it was reasonable to grant the order. There had been very little sense of urgency by the respondent in the search of the other property. He was disappointed to hear that the respondent had last contacted the housing agent almost a month ago. He did not think that the tenant had made sufficient efforts over the last 13 months. They had served the rent increase notice in sufficient time, and the tenant has not paid any of the shortfall.
15. The respondent submitted that the notice to leave had affected him so much. He said life had been tough. If was given keys today for a new property, he would give notice and would leave the property. His problem was that the last time he has spoken to his new prospective landlord, they sent him an email hoping that they would be able to give him a new property at the end of October, but they were not promising that this would happen on that date. He said he is happy to leave, but he can't confirm when, and he would have nowhere to go to if the order were to be granted just now.

16. He said he was still at university; he was meant to graduate in September but had to re-sit exams. He will re-sit them in December.
17. He was asked about his daughter. He said this was the main reason that he did not want to leave as he wanted to be somewhere near to her, if he had to move far away, he would not be able to see his daughter, and it would be tough for her as well.
18. He advised he had been looking for other places, and he hoped that the one he had been offered would be ready in the next month.
19. He was asked if he would agree to the decree being granted if it was subject to him staying until the end of December 2024. He advised that he not agree this, as the new property might not be ready then.
20. He was asked about his job situation. The respondent advised that his employer was going to keep his job open for him until January 2025.
21. Applicant said the situation that he might have nowhere to go to was very stressful for him.
22. He was asked why he was not paying the rent increase. He said it was because the applicant had not said he was allowed to stay in the property.
23. He was asked about the companies registered at the property address. He agreed that he had registered these. He advised that it is his dream to run a home care business. He has not started running the business yet. He had not asked for consent to run the business from the property. He currently works as a carer.
24. He was asked what other efforts he had made to look for other accommodation. He advised that he had a housing officer, and the offer he has received was through the council housing list.
25. He advised that the new property is a 7/8 minutes' drive for him. He confirmed he drives.
26. The respondent advised he called the housing agency almost every week. It can be difficult to get contact. He was still applying if he saw any new homes. The only way to find somewhere faster is to live far away from Edinburgh but it would affect his daughter. Therefore, he was asking for patience. He was asking for the sake of my daughter. He said that the stress had affected him, and he had failed his exams due to getting the notice to leave. He advised that he cares for his daughter when his daughter's mum is at work. He said she

works shifts, and his daughter will stay with him in the property overnight. His daughter is 10 years old.

### Findings in Fact

27. The Tribunal found the following facts established: -

- a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 29 December 2020.
- b. The tenant is Onyekach John Chendo.
- c. The landlord is Alexander Corlett.
- d. The property is 80 Pitt Street, Flat 3, Newhaven, Edinburgh, EH6 4DB.
- e. There was submitted a notice to leave dated 15 September 2023, stating that an application would not be made until 11 December 2023. It sought eviction under grounds 1a.
- f. The notice to leave had been emailed to the tenant. There was evidence of service.
- g. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property.
- h. The application was amended to an application proceeding under Ground 1 intention to sell.
- i. The title deeds for the property show that the landlord is the owner of the property.
- j. There was correspondence from a solicitor regarding being instructed to sell the property once vacant possession had been obtained.
- k. The applicant intended to use the free proceeds of sale to purchase a home for himself in London. He had limited other funds to use as a deposit.
- l. The applicant was 36 years of age.
- m. The applicant is currently residing at his parent's home. He has no security of tenure.
- n. The applicant owns no other heritable property.
- o. The respondent works as a carer and is also a student.
- p. The respondent has caring responsibilities for his 10-year-old daughter.

- q. The respondent was waiting to be rehoused and had been offered a property.

### Reasons for Decision

28. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in Schedule 3 of the Act applies.
29. The grounds which the Applicant seeks eviction under are ground 1. Ground 1 is in the following terms: -

#### **1 Landlord intends to sell.**

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal [ May] <sup>2</sup> find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, [...] <sup>3</sup>

(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] <sup>4</sup>

[ (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.] <sup>4</sup>.

(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.

30. The applicant and the applicant's agent appeared. The respondent appeared. The applicant is entitled to sell the property. He is the owner of the property. The applicant confirmed that he intended to sell the property. He resides in the London area. He wishes to purchase a property in that area. He is currently residing with his parents. He intends to use the free proceeds from the sale of the property towards purchasing a property in London. If the order is granted it appears to the tribunal the property will be sold. We find that the application meets the tests set out in ground 1.

31. The tribunal was then required to consider if it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction.

32. In deciding to grant the order we place weight on the following factors in deciding to do so. This is the only property that the landlord owns. He is 36 years of age and wishes to buy his own home to live in. He currently resides with his parents. The property was bought as an investment to provide a deposit to buy his first home. He now wants to realise that investment and he needs the free proceeds of sale to put towards buying a property in London. He had given notice of his intention to sell over a year ago to the respondent. The respondent had indicated that he has been offered another property, which is not yet available, but it is likely going to be available in autumn, the end of October or before the end of December 2024. The applicant had agreed that the respondent could remain in the property until the end of December 2024.

33. The main factor against granting the order, is that the respondent's daughter lives close by, and he assists with childcare for his daughter. An order for eviction may make this childcare arrangement more difficult to achieve. We place some weight on this factor.



34. Factors against granting the order and which we place less weight is that the respondent does not have a place to move straightaway. From the respondent's evidence, he was clear that he was waiting on a property becoming ready to move into. We did not believe, however, that the respondent had made real efforts to find somewhere else to live, and he has had 13 months to do so. We also considered that his area of search was small, being restricted to the Leith area. We noted that he drives, works and is a student, and so was clearly an able person. On balance, we considered that the area of search could be wider. His ability to drive also allows him the ability to keep in touch with his daughter. We place little weight on the fact he is a student, in May, he advised that he was finishing his course in the summer, and this has now extended for a further period and his ability to drive will help ensure access to his university.

35. We found the applicant to be credible and reliable in his evidence. While we did not disbelieve the respondent's evidence, we felt at times he was vague in his answers, especially about when he would be able to move out and what efforts he had made to find other accommodation. We also not did find his position in refusing to pay the rent increase reasonable, albeit this is not a reason why we are granting the order for eviction.

36. Having regard to the matters set out above, the tribunal was prepared to grant the order for recovery of possession under ground 1. We consider that this landlord is fairly young, he had purchased the property as an investment to use when he came to purchase a home for himself in London. He now wished to do so. His home situation was less secure than the respondent's living in one bedroom at his parents' home. We do not consider that this is reasonable. He appeared to be stuck in a sort of *limbo* until the property is sold. He had given the tenant notice of his intention to sell in September 2023, over a year ago. The tenant although he had been a fairly good tenant, did not appear to have made a real effort to find alternative accommodation. He also appeared to have been particularly selective in where he would live thus making finding new accommodation more difficult. He indicated a date when he could move out,

but then was vague about whether he would leave on that date. While we do place weight on his caring role for his daughter, on balance we consider that the rights of the landlord to purchase his own property should be accorded greater weight. We find that the landlord had been a good landlord and was still prepared to try and assist the respondent to have time to sort out other accommodation, agreeing that he could remain in the property until the end of December 2024. In all the circumstances we consider it would be reasonable to grant the order but make it a condition that the order cannot be enforced until 1 January 2025.

### Decision

37. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**

Melanie Barbour

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Legal Member/Chair

**23 October 2024**  
Date