



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/24/0427

Re: Property at 3 Parliament Street, The Shore, Leith, Edinburgh, EH6 6EB (“the Property”)

Parties:

Miss Vanessa Grieve, 1 Durham Drive, Duddingston, Edinburgh, EH15 1PG (“the Applicant”)

Mr Robert Salaga and Mr Maciej Drag, 3 Parliament Street, The Shore, Leith, Edinburgh, EH6 6EB; 60 Wynd House, Edinburgh, EH6 6DF (“the Respondents”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the First Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 23 October 2024, the Applicant was in attendance. The First Respondent was neither present nor represented. The Second Respondent was in attendance supported by Ms Katagina Salaga.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the First Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received from the Second respondent an email dated 27 September 2024.

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

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.

- ii. The Applicant previously leased the Property to the Respondents in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 6 March 2020.
- iii. The rent payable in terms of the PRT is £630 per calendar month.
- iv. A deposit of £900 was agreed to be paid in terms of the PRT.
- v. On 27 October 2023, the Applicant served on the Respondents by email a Notice to Leave requiring the Respondents remove from the Property by 22 January 2024 on the basis of Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. The Second Respondent has vacated the Property.
- vii. The Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD the Second Respondent had dialled into the CMD from Gran Canaria. He confirmed having vacated the Property on 23 January 2024 and had no objection to an eviction order being granted against him in order to terminate the PRT. The Second Respondent then left the CMD.

The Applicant made the following submissions in response to questions from the Tribunal:-

- i. The Applicant is not aware of the precise date the Second Respondent vacated the Property.
- ii. The First Respondent is still in occupation.
- iii. Both Respondents have been very good tenants.
- iv. The First Respondent is looking for a 2 bedroomed property. He has a primary school aged child who stays with him from time to time. The Property has only one bedroom.
- v. He has been bidding for mid-market rent properties.
- vi. He has received an assurance from the local authority that a property will be found for him. An eviction order is needed to advance his housing application.
- vii. The Applicant's brother, John Christopher Grieve, still requires to occupy the Property. He suffers from depression. He stayed with the Applicant for a period but that did not work out as she has young children. He is "sofa surfing" between other siblings and friends. He will occupy the Property long-term.
- viii. The Applicant seeks an eviction order.

Findings in Fact

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant previously leased the Property to the Respondents in terms of the PRT that commenced on 6 March 2020.
- iii. The rent payable in terms of the PRT is £630 per calendar month.
- iv. A deposit of £900 was agreed to be paid in terms of the PRT.
- v. On 27 October 2023, the Applicant served on the Respondents by email a Notice to Leave requiring the Respondents remove from the Property by 22 January 2024 on the basis of Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. The Second Respondent vacated the Property on 23 January 2024.
- vii. The Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- viii. The First Respondent is still in occupation of the Property.
- ix. Both Respondents have been very good tenants.

- x. The First Respondent is looking for a 2 bedroomed property. He has a primary school aged child who stays with him from time to time. The Property has only one bedroom.
- xi. The Second Respondent has been bidding for mid-market rent properties and has received an assurance from the local authority that a property will be found for him. An eviction order is needed to advance his housing application.
- xii. The Applicant's brother, John Christopher Grieve, suffered a breakdown in his relationship with his ex-partner. He requires to occupy the Property as his only or principal home for at least 3 months. He suffers from depression. He stayed with the Applicant for a period but that did not work out as she has young children. He is "sofa surfing" between other siblings and friends. He will occupy the Property long-term.

Reasons for Decision

The First Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal.

The Second Respondent was content for an eviction order to be granted.

Ground 5 of Schedule 3 of the 2016 Act states:-

"5 Family member intends to live in property

(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

- (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or*
- (d) in a qualifying relationship with a qualifying relative of the landlord.*
- (5) For the purposes of sub-paragraph (4)—*
 - (a) two people are in a qualifying relationship with one another if they are—*
 - (i) married to each other,*
 - (ii) in a civil partnership with each other, or*
 - (iii) living together as though they were married,*
 - (b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,*
 - (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,*
 - (d) a person's stepchild is to be regarded as the person's child,*
 - (e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.*
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.*
- (7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention."*

The Tribunal is satisfied that the Applicant's brother (a qualifying relative of the Applicant as defined) intends to live in the Property as his only or principal home for at least 3 months.

The Tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it is reasonable to grant an eviction order having regard to the circumstances of the Applicant's brother as narrated in his Affidavit dated 6 March 2024 (providing the necessary evidence of Mr Grieve's intention) and as described by the Applicant at the CMD.

Decision

The Tribunal grants an eviction order in favour of the Applicant.

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.

Gillian Buchanan

Legal Member/Chair

23 October 2024
Date