

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/24/2718

Re: Property at 53 Bogwood Road, Dalkeith, EH22 5EQ (“the Property”)

Parties:

Ms Natasha Difolco, Jacqueline Difolco, 42 Gaynor Avenue, Loanhead, EH20 9LT (“the Applicant”)

Mr Steven Cairns, Laura Cairns, 53 Bogwood Road, Dalkeith, EH22 5EQ; 53 Bogwood Road, Dalkeith, EH22 5EQ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

BACKGROUND

1. By lease dated 7 January 2019 the Applicant let the property to the Respondents.
2. A Notice to Leave was served upon the Respondents on 21 September 2023. This Notice to Leave intimated that the Applicants sought recovery of possession of the property on three grounds of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 those being ground 1, intention to sell the Property, ground 1A, intention to sell the Property to alleviate financial hardship and ground 11, breach of the tenancy agreement.
3. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority. An application was presented to the Tribunal on 12 June 2024. The Application was accompanied by correspondence which confirmed the intention to sell, confirming the expiry

of the Applicants' current mortgage deal and affidavits from the Applicants referring to breaches of the tenancy agreement.

THE CASE MANAGEMENT DISCUSSION

4. The Applicants did not participate personally in the Case Management Discussion but were represented by Miss R Doyle of McEwan Fraser Legal. Both Respondents participated personally.
5. Miss Doyle confirmed the Applicants wished an eviction order to be granted. The Respondents advised that in principle did not oppose that. They did not dispute the Applicants' intention to sell the property, the only issue arising from their point of view being the effective date of any eviction order which may be granted.
6. Given the acceptance by the Respondents of the application for an eviction order in terms of ground 1 – the landlord's intention to sell the let property – the Tribunal did not consider it necessary to indulge in discussion in relation to any issues of financial hardship or any issues relating to any alleged breach of the tenancy agreement.
7. The Respondents advised they reside at the property with their three children, a son aged 17, a daughter aged 15 and a son aged 12 years. The 15 and 12 year olds are both at high school. The 17 year old has left school and is going to college.
8. The Respondents made reference to health issues affecting themselves and two of their children. They did not, however, suggest that these were being relied on in support of an argument that it was not reasonable for an eviction to be granted. Instead, they were suggesting that they should be taken into account in determining the date upon which any eviction order should become enforceable.
9. They have already been engaging with the Local Authority to secure alternative accommodation. No suitable accommodation can be provided to them without an eviction order. Because of the ages and gender of their children, they do, ideally, now require a four bedroom home – their 17 year old son is at an age where he needs a bedroom of his own, the two younger children, one being male and one female, each require their own bedroom, and the Respondents require a bedroom - and it is likely that the local authority will require a number of weeks at least to identify a suitable property for them. They note that the let Property is a three-bedroom property and, as such, it does not provide ideal accommodation for them at this stage in any event.
10. Being conscious of the festive period approaching and the information provided by the Respondents in relation to their personal circumstances, discussion took place in relation to the date upon which an eviction order should become enforceable. After discussing matters with Parties it was agreed that an eviction order would be granted in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and that this will become enforceable, if necessary, on 31 January 2025.

DECISION

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Schedule 3 to said Act.

Order not to be executed prior to 12 noon on 31 January 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.

Virgil Crawford

22 November 2024

Legal Member/Chair

Date