



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/24/2633

Re: Property at 3/1 Seafield Place, Sighthill, Edinburgh, EH6 7QP (“the Property”)

Parties:

Miss Laura Mitchell, 10 Mellerstain Cottages, Gordon, TD3 6LF (“the Applicant”)

Mr Timothy Johnson, 3/1 Seafield Place, Sighthill, Edinburgh, EH6 7QP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 3/1 Seafield Place, Sighthill, Edinburgh, EH6 7QP under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is

based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 10 January 2020, a Notice to Leave dated 12 March 2024, various emails between the Applicant and Annan Property, emails between Annan Property and the Respondent, a quote for the sale of the Property from Annan Solicitors, and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to Edinburgh City Council dated 11 June 2024.
3. On 29 October 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 11 December 2024. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 30 October 2024 and the Execution of Service was received by the Tribunal administration.
4. On 10 November 2024 the Respondent lodged written representations. On 12 November 2024 the Respondent sent a letter dated 6 November 2024 from Links Medical Practice.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 11 December 2024 by way of teleconference. Miss Mitchell appeared on her own behalf. Mr Johnston appeared on his own behalf.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 10 January 2020, a Notice to Leave dated 12 March 2024, various emails between the Applicant and Annan Property, emails between Annan Property and the Respondent, the quote for the sale of the Property from Annan Solicitors, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to Edinburgh City Council dated 11 June 2024, the Respondent’s written representations and the letter dated 6 November 2024 from Links Medical Practice.. The Tribunal noted the terms of these documents.
7. Miss Mitchell advised she was looking for the Tribunal to grant an order for eviction as she wanted to sell the Property and move on with her life. She had lived in the Property for her whole life except over the last four years since she rented the Property to Mr Johnston. She had been a Social Worker and had moved to the Borders where she was renting a property. She had taken early retirement and had lost about 45% of her pension. She needed to reduce her outgoings. Her rent was due to be increased again in March. She had not increased the rent in the Property as she did not want him to incur

further financial hardship. She had a good relationship with Mr Johnston and after giving Notice to Leave had contacted him to offer support and provide details of other Landlords and possible options for rehousing including with Link Living. She had also spoken with his Housing Officer. She had also offered to support him with removal costs, but he declined. She was also willing to forgo rent as she appreciated that he may struggle to pay full rent elsewhere, but Mr Johnston explained his mother would help him out with the rent. She was having to give notice on her rental property as she could no longer afford to pay rent. She was moving into a friend's spare room at the end of January. Her plan was to sell the Property and buy somewhere else for her and her husband to move into.

8. Mr Johnston explained that he had struggled through the pandemic as he was in the hospitality business. He had always found work. In August 2023 he was unfairly dismissed. This led to him having a breakdown and feeling suicidal. He is supported by a mental health nurse. He tried various medications. It was a very difficult time for him and then six months later he received the Notice to Leave. As soon as he got that he sought help from the homeless team at Edinburgh City Council and signed up for Edindex. He bids on properties every week and is signed up for On the Market and is looking for properties in the Borders which take dogs. However, he submitted that no one wanted a tenant on Universal Credit. He explained he very rarely left the Property. Every situation is very hard. He hopes to get back into work. He finds the current situation difficult as he has no control over the situation. He has been advised to stay in the Property until an eviction order is granted.
9. On being questioned by the Tribunal he felt the calls made to him by the Applicant were vicious. He did not dispute the application. He wanted out of the Property. He wanted some recovery time of between 4-6 months to help him get back to work.
10. Miss Mitchell in response explained that she was sorry that Mr Johnston had the perception that she had not been supportive to him. The Property was the only property she owned. Regarding timing she pointed out the Notice to Leave had been served in March last year. This was a stressful time for her. She wanted the order as soon as possible as she had to move out by the end of January and could stay with her friend until the end of February.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support.
12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict

13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 7 June 2024. The Notice to Leave was served on the Respondent by email on 12 March 2024. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 7 June 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the submissions made by on behalf of both parties. The Tribunal was satisfied on the basis of the documents lodged, together with parties' submissions that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as she regained possession. The application was not disputed and the Respondent wanted out of the Property.
16. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it due to her financial position. The Respondent on the other hand no longer wanted to live in the Property. He struggled with his mental health and was determined to get back into work and needed a bit of time to find some stability to do so. The Tribunal gave weight to the fact that the Respondent did not oppose the application. The Tribunal were conscious that the Respondent was finding it difficult to find affordable, alternative accommodation with his dog. The Tribunal took into account that he was taking advice from the local Council regarding rehousing and that before they could assist him, he needed an order from the Tribunal. On balance the Tribunal considered the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order. Due to the difficulties the Respondent is facing in finding alternative, affordable accommodation, to allow him time to seek further help from the Council and to secure employment, the Tribunal determined the order should be suspended until the end of February 2025.

17. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

18. The Tribunal granted an order for repossession suspended until 28 February 2025. The decision of the Tribunal was 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.

Shirley Evans

16 December 2024

Legal Member

Date