



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/24/3568

Re: Property at 7/27 Portland Gardens, Edinburgh, EH6 6NQ (“the Property”)

Parties:

Jonathan McAllister, 4 Bradford Gardens, Carrickfergus, BT38 9EH (“the Applicant”)

Marek Dvorak and Jan Smrha, residing together at 7/27 Portland Gardens, Edinburgh, EH6 6NQ (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Ann Moore (Ordinary Member)

Decision (granted in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted in favour of the Applicant.

Background

1. This is an application for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicant to the Respondent and commenced on 24th October 2022.
2. The application was dated 5th August 2024
3. The application relies upon a Notice to Leave dated 11th April 2024, issued in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”), served upon the Respondents by email, all in accordance with the provisions of the PRT. The Notice was made in terms of Ground 1 of

Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 7th July 2024.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon the City of Edinburgh Council on 5th August 2024 was included in the application papers.
5. The application papers included an estate agency valuation, together with proposed estate agency selling costs, in relation to the Property issued to the Applicant by Gilson Gray, solicitors and estate agents. The Applicant’s solicitor had also lodged a written statement dated 12 February 2024 which explained why the Applicant wished to sell the Property and why he considered it reasonable to do so.
6. A copy of the Application, along with a letter from the Tribunal giving details of a proposed Case Management Discussion, was intimated by Sheriff Officers upon both the Respondents on 31st January 2025.

The Case Management Discussion

7. A Case Management Discussion (“CMD”) took place by teleconference on 10th March 2025. The Applicant was represented at the CMD by his solicitor, Mr. David Gray.
8. The Respondents did not join the CMD call. The Tribunal was satisfied that the Application, and details of the CMD, had been intimated upon both the Respondents by Sheriff Officers on 31st January 2025. The Tribunal was satisfied that the Respondent had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) had been duly complied with. The Respondents had emailed the Tribunal on the 18th and 19th February 2025. In those emails they had asked for assistance in relation to the application. The Tribunal had responded to the Respondents’ emails to advise that the Tribunal was not able to give advice to parties. The Tribunal directed the Respondents to a list of agencies who may be able to provide advice which is available on the Tribunal website. No further communication was thereafter received from either Respondent. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.
9. At the CMD the Applicant’s solicitor asked the Tribunal to grant an order for the Respondents eviction from the Property.

Findings in Fact and Law

10. The Applicant is the owner of the Property,
11. The Applicant let the Property to the Respondents under a Private Residential Tenancy which commenced on 24th October 2022.

12. Notice to Leave was emailed to the Respondents on 11th April 2024. The notice to leave relied upon Ground 1 of Schedule 3 part 1 of the 2016 Act
13. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon the City of Edinburgh Council on 5th August 2024.
14. The Applicant intends to instruct Gilson Gray, solicitors, to market and sell the Property.
15. The Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it, and it is reasonable that an order for eviction is granted.

Reasons for Decision

16. The application is in terms of rule 109, being an order for eviction of a PRT. We were satisfied based on the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
17. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1.)...the landlord intends to sell the let Property.
 - (2.) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord –
 - a. is entitled to sell the let Property,
 - 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
 - c. The tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
 - (2) 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.
20. The Applicant is the owner of the Property and is entitled to sell the Property. In the written submission lodged on behalf of the Applicant it is explained that the Applicant has engaged agents to sell the Property. It is further explained that the Applicant wishes to sell the Property as he wishes to realise the value of the Property to allow him to redeem the mortgage over the Property. The Respondents have been persistently in arrears of rent during the term of the tenancy. As of 20th February 2025, the Respondents had accrued the sum of £1594 by way of rent

arrears. At various times during the course of the tenancy between the parties the Respondents' rent arrears have exceeded £3000. The Applicant has incurred significant costs in maintaining the Property during the terms of the tenancy. The Applicant has been stressed by the failure of the Respondents to pay their rent in accordance with the terms of the tenancy between the parties. His mental health has suffered because of that stress. The Applicant wishes to terminate the tenancy between the parties and to thereafter sell the Property

21. The Tribunal considered whether it was reasonable to issue an eviction order.

The Tribunal accept that the Applicant wishes to sell the for the reasons given in the written submission which was lodged on his behalf.

The Respondent has not given any evidence to the Tribunal

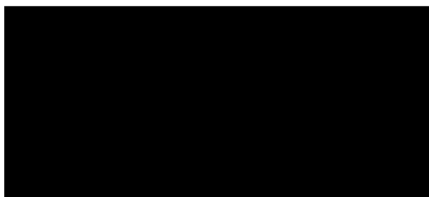
In all the circumstances the Tribunal are satisfied that it is reasonable to grant an order for eviction.

Decision

22. In all circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act.

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.



Andrew Cowan

Legal Member/Chair

10th March 2025

Date