



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/24/3801

Re: Property at 40 Northfield Avenue, Edinburgh, EH8 7PS (“the Property”)

Parties:

Mr Jonathan Blurton, Mr Mark Ivinson, 52 Duddingston Road West, Edinburgh, EH15 3PS; 40 Mountcastle Loan, Edinburgh, EH8 7RB (“the Applicants”)

Ms Leanne Todd, 40 Northfield Avenue, Edinburgh, EH8 7PS (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicants. It called for case management discussion (‘CMD’) at 2 pm on 24 March 2025, by teleconference. The Applicants were represented on the call by Mr Gordon, of Thorntons Law LLP, solicitors. The Respondent was not on the call or represented. The commencement of the CMD was delayed by 10 minutes in case she was experiencing any technical difficulty; but there remained no contact from her.

The application and notice of the CMD were served on the Respondent by sheriff officers on 11 February 2025. The Tribunal was therefore satisfied that she was aware of the CMD and had chosen not to oppose the application.

- Findings in Fact

The Tribunal considered the following unopposed facts as relevant to its decision:

1. The Applicants let the Property to the Respondent in terms of a private residential tenancy agreement with a start date of 19 April 2023.
2. In terms of that agreement, any notices are to be served by email to the addresses set out in it.
3. Also in terms of the agreement, rent of £950 is payable on or before the nineteenth day of each month.
4. On 21 February 2024, the Applicants sent a notice to leave to the Respondent, by recorded delivery, stating that they would rely on Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application to the Tribunal to follow.
5. On 15 August 2024, the Applicants sent the Respondent a further notice to leave by email, via their agents, stating that they would rely on Ground 1 and ground 12 of Schedule 3 to the Act in any application to the Tribunal to follow.
6. The Applicants are the owners of the Property.
7. The Applicants intend to sell the Property for market value, or at least put it up for sale, as soon as the Respondent ceases to occupy it.
8. The Applicants wish to realise the equity in the Property to reinvest in their company, which employs around 60 staff.

9. The Respondent has been in arrears of rent since 19 November 2023.
10. The Applicants have not complied with the pre-action protocol prescribed by the Scottish Ministers for rent arrears cases.

- Reasons for Decision

11. As a preliminary matter, the Tribunal noted that this application had been raised on 19 August 2024, which is prior to expiry of the notice period relative to the notice to leave sent on 15 August 2024. After being addressed by the Applicants' representative on the matter, it determined that it could continue to entertain the application on the basis of s.52(4) of the Act, it being reasonable to do so. The Respondent was in reality apprised of the Applicants' intention to apply for an order by the notice that was served by incorrect means on 21 February 2024. The matter now calls for consideration fully 4 months since the notice period for the second notice has expired. There is therefore no real prejudice to the Respondent, in terms of having time to address the issues raised in the notice, at least insofar as these relate to ground 1.

12. Thereafter, the Tribunal considered that ground 1 was established and, in particular, that it was reasonable for the order to be granted. It is at first blush reasonable for the Applicants to be entitled to sell their property when they wish. There was no information presented by the Respondent to suggest that that general proposition should not apply in this case.

13. The Tribunal did not consider that ground 12 was made out here, however. While arrears of rent have subsisted on this account for some 16 months, the Applicants have not demonstrated that it is reasonable to grant an order for eviction on that basis. The ground was not included in the first notice served and the pre-action protocol has not been observed. The requirements of the protocol were not observed, even after the application was raised. The Respondent has therefore not yet been afforded sufficient opportunity, realising that the arrears are being taken seriously, to take steps to address them.

- Decision

Eviction order granted.

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.

Nairn Young

31st March 2025

Legal Member/Chair

Date