

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) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/25/0550

Re: Property at 32/7 Restalrig Drive, Edinburgh, EH7 6JF (“the Property”)

Parties:

Mrs Tahira Rafiq, 2 Marionville Avenue, Edinburgh, EH7 6AS (“the Applicant”)

Ms Kim Short, 32/7 Restalrig Drive, Edinburgh, EH7 6JF (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicant’s intention for her son to live in the Property and for eviction and recovery of possession on Ground 5 of Schedule 3 to the Act.

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 10 February 2025;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 3 February 2023;
3. Notice to Leave dated 23 October 2024 and served by Sheriff Officer’s the same date;
4. Section 11 Notice and letter serving on local authority dated 10 February 2025;
5. Affidavit from Amjad Rafiq sworn 4 February 2025;
6. Sheriff Officer Certificate of Service of CMD Notification on the Respondent dated 29 April 2025.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 4 July 2025. The Applicant did not participate but was represented by her solicitor Ms S Callaghan. The Respondent participated and represented herself.

The Applicant's position

The Applicant's position was that this was her only residential rental property. She wished to recover possession for her eldest son and his wife to move into. They currently lived with her and her house was overcrowded.

The Respondent's position

The Respondent did not oppose the application. She was in touch with the local authority and had been told not to move out until an order was granted.

She has health issues (asthma, anxiety and depression). She lives in the Property with her two children aged 9 and 16. The 16 year old has left school.

Decision and Reasons

The Tribunal considered the documentary evidence and information provided.

The Tribunal had regard to the terms of Ground 5:

Family member intends to live in property

5(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.

In so far as material the Tribunal made the following findings in fact:

1. The parties let the Property under a Private Residential Tenancy Agreement (**PRTA**) commencing 3 February 2023;
2. Notice to Leave dated 23 October 2024 was served by Sheriff Officer's the same date;
3. A Section 11 Notice was served by email on the local authority on 10 February 2025;
4. The Applicant's son and wife intend to occupy the Property as their home;
5. The Applicant's own home is overcrowded and her son and wife currently reside with her;

6. The Applicant is retired and has no other residential rental properties;
7. The Respondent has health issues (asthma, anxiety and depression). She lives in the Property with her two children aged 9 and 16. The 16 year old has left school;
8. The Respondent does not oppose the application and is in contact with the local authority.

The Tribunal were satisfied that Ground 5 had been established.

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances.

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.

Alan Strain

Legal Member/Chair

Date: 4 July 2025