



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/25/0178

Re: Property at 6, 147 Lochend Road, Restalrig, Edinburgh, EH7 6ET (“the Property”)

Parties:

Phoenix Properties Edinburgh Limited, c/o 149/1 Lochend Road, Edinburgh, EH7 6ET (“the Applicant”)

Mr Rafal Dabrowski and Ms Angelika Blaszczykiewicz, 6, 147 Lochend Road, Restalrig, Edinburgh, EH7 6ET (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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

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 application is based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
2. The application was accompanied by a Notice to Leave dated 14 October 2024 with proof of postage and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with an email to Edinburgh City Council dated 14 January 2025.

3. On 25 April 2025 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 25 July 2025.
4. On 19 June 2025 Mr Wilson from CHAI lodged written submissions on behalf of the First Respondent. On 26 June 2025 he also lodged a List of Authorities.
5. On 7 July 2025 the Tribunal issued a Notice of Direction requiring the Applicant to lodge a copy of the tenancy agreement between the previous owner of the Property with the Respondents with a copy of the notice of intimation of the change of ownership and a copy of the Notice to Leave the Applicant had served on the Respondents and requiring both parties to lodge any further document they wished to rely on at the CMD.
6. On 18 July 2025 the Applicant’s solicitor lodged written submissions in support of the application. On 22 July 2025 the Applicant’s solicitor forwarded a copy of the tenancy agreement between the former Landlord Michelle Menelaws and the Respondents dated 14 January 2019 together with an Inventory of Authorities.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 25 July 2025 by way of teleconference, Mr Symon from Campbell Smith LLP appeared on behalf of the Applicant. Mr Wilson from CHAI appeared for the First Respondent. Ms Blaszczykiewicz the Second Respondent appeared on own behalf.
8. The Tribunal had before it the Private Residential Tenancy Agreement dated 14 January 2019 between Michelle Menelaws and the Respondents, the Notice to Leave dated 14 October 2024 with proof of postage, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with email to Edinburgh City Council dated 14 January 2025 and the written submissions and authorities lodged on behalf of the Applicant and the First Respondent. The Tribunal noted the terms of these documents. Advised parties it had read the written submissions and authorities lodged on both parties and invited parties to make any further submissions.
9. Mr Symon moved the Tribunal to grant an order for eviction. He referred to his written submissions and expanded on them. He submitted that the ground in respect of Schedule 3, paragraph 1(2) of the 2016 Act had been established. He invited the Tribunal to have regard to the object to which this ground was designed to achieve. At the time the Notice to Leave was served the Landlord, Michelle Menelaws had the intention to sell the Property. There was no dispute

that she sold the Property prior to the expiry of the Notice to Leave and the object of this ground was satisfied. His clients wanted to conclude the process by securing eviction. He referred the Tribunal to *Reynolds v Henry and Henry [UTS/AP/24/0014]* and submitted that the Tribunal placed particular emphasis on avoiding situations where “*unscrupulous landlords may be tempted to manifest a situation*” in order to secure eviction. He submitted that in this instance, considering the wider factual matrix there was no attempt to manifest a ground of eviction.

10. Mr Wilson for the First Respondent also referred to his written submissions and expanded on them. He opposed the order for eviction. After the Notice to Leave was served on 14 October 2024 by the previous Landlord she sold the Property to the Applicant on 8 November 2024. He submitted that the application had not addressed the ground for eviction which contained three stages namely (i) that the Applicant was entitled to sell the Property, (ii) that the Applicant intended to sell the Property for market value, or at least put it up for sale, within 3 months of the tenants ceasing to occupy it, and (iii) that it is reasonable to issue an eviction order on account of those facts. Reasonableness was the last stage, but it is for the Applicant to establish the facts that they intended to sell the Property to show the ground had been met. The Applicant had title to sell the Property but there was nothing before the Tribunal to show the Applicant had any intention of doing so. He submitted that at the time the Notice to Leave was served, the previous owner evidently had the intention to sell. That intention was fulfilled by the Property being sold to the Applicant. He submitted that it was clear, therefore, that for the Landlord’s intention to sell the Property, it was not necessary to evict the Respondents. He submitted that there was no genuine intention to sell the Property and as such reasonableness was not engaged. He submitted that it was disingenuous of the Applicant to state that the Respondents’ continued occupation of the Property was a contrivance when the 2016 Act was very clear that the tenancy would only come to an end if an order to evict was made where the tenant had chosen to remain in a property after the service of a Notice to Leave. He submitted the ground to evict had not been met.
11. The Tribunal asked Ms Blaszczykiewicz the Second Respondent what her position was. She stated that she suffered from a number of physical and mental health issues including endometriosis, adenomyosis, microscopic colitis and depression. It had taken six years for her to get a diagnosis. She had had two jobs. She is on painkillers to manage the pain caused by her conditions. She liked living in the Property.
12. Mr Symon further submitted that when the Applicant purchased the Property on 8 November 2024 their expectation was that the Respondents would leave

the Property by January 2025 when the Notice to Leave became live. The point of his submission was that there was a validly executed Notice to Leave, that the Respondents continued to live in the Property and that there was an intention as it existed with the previous Landlord at the time that the Notice to Leave was issued. He submitted that the original Landlord had a genuine intention to sell, thus clearly satisfying the object of the ground of eviction and the Applicant as the new owner was entitled to rely on the intention exhibited by the previous Landlord. He submitted the Applicant felt disadvantaged by the Respondents remaining in the Property which they had not expected the Respondents to do. On being questioned by the Tribunal Mr Symon advised that his client owned a number of properties and had been involved in the letting business for a number of years.

13. In response Mr Wilson submitted that from the point the Notice to Leave had been served the Respondents had looked for other property and had taken advice from Edinburgh City Council as to their housing options. The Council did not class the Respondents as being homeless or at risk of homelessness. The Respondents continued to look for alternative accommodation. He submitted that even if the Applicant had purchased the Property with the expectation that the Respondents would vacate after the Notice to Leave, that legal mistake did not create a ground for eviction. The Applicant may have a legal remedy against the previous Landlord. The Respondents were settled in the area and other than having made the difficult decision to remain in the Property knowing the Applicant intended to proceed with the current application, had always got on well with the previous Landlord. However, the ground to evict had not been met.

Findings in Fact

14. The Respondents entered into a Private Residential Tenancy with Michelle Menelaws on 19 January 2019 to lease the Property. The Property was let through Kilgour Property Management Ltd
15. Michelle Menelaws was the heritable proprietor of the Property on 19 January 2019.
16. On 14 October 2024 Kilgour Property Management Ltd served a Notice to Leave on the Respondents on behalf of Michelle Menelaws based on Ground 1 of Schedule 3 of the 2016 Act and on the basis that she intended to sell the Property. The date contained in the Notice to Leave that proceedings to evict could be raised in the Tribunal was 9 January 2025.

17. After the Notice to Leave was served on the Respondents, they sought advice from Edinburgh City Council on their housing options. The Respondents have continued to look for alternative accommodation.
18. On 8 November 2024 Michelle Menelaws sold the Property to the Applicant.
19. The Applicant is in the business of letting and owning properties and have a portfolio of leased properties. They have carried on this business for a number of years.
20. The Applicant is entitled to sell the Property.
21. The Respondents did not vacate the Property by 9 January 2025 and remain in the Property.
22. The Respondents are settled in the area and are happy in the Property. The Respondents have a daughter of school age who exhibits social anxiety and difficulties associated with Autistic Spectrum Disorder. Ms Blaszczykiewicz has endometriosis, adenomyosis, microscopic colitis and depression. She takes painkillers daily to manage the pain caused by her conditions.
23. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Edinburgh City Council on 19 January 2025.

Findings in fact and in law

24. The Applicant has not established that the facts required in Ground 1 of schedule 3 of the 2016 Act have been satisfied. The Applicant has not established that it has a ground to evict under Ground 1 of Schedule 3 of the 2016 Act.

Reasons for Decision

25. The Tribunal considered the issues set out in the application together with the documents lodged by the Applicant, the written submissions and the lists of authorities and the oral submissions made by all parties. The facts of the matter are simple and are not in dispute. What is in dispute is whether the Applicant has met the requirements of Ground 1 of schedule 3 of the 2016 Act and if so whether it is reasonable to evict.

26. 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 of Schedule 3 which provides:-

*“(1)It is an eviction ground that 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.
(3)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.*

27. 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, or unless it is not 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.

28. Notice to Leave is defined in terms of Section 62 (1) of the 2016 Act as follows-*“References in this Part to a notice to leave are to a notice which*

*(a)is in writing,
(b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
(c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
(d)fulfils any other requirements prescribed by the Scottish Ministers in regulations.”*

29. In this case the Notice to Leave was served by a previous Landlord and not the Applicant. It is in writing and clearly states it was the previous Landlord'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 previous Landlord expected to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 9 January 2025. The Notice to Leave was served on the Respondents by post on 14 October 2024 and signed for on 15 October 2024. In terms of Section 54 of the 2016 Act the notice period of the Notice to Leave for Ground 1 of schedule 3 is 84 days. None of these facts were in dispute.

30. However, the Tribunal is not satisfied that the Applicant is entitled to rely on a Notice to Leave served by the previous Landlord. They were not the Landlord at the time the Notice to Leave was served. They could not in any circumstances be said to have had the intention of selling the Property at that time as they were not the Landlord nor were they the heritable proprietor. At the time the Notice to Leave was served they could not satisfy Ground 1 of schedule 3 and paragraphs (1) and (2) of Ground 1 as they had neither the title nor the intention to sell.
31. Section 44 of the 2016 Act provides that *“A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part”*. Section 45 of the 2016 Act provides that *“When ownership of a property let under a private residential tenancy is transferred, the landlord's interest under the tenancy transfers with it.”*
32. There is nothing in the 2016 Act that states that a new Landlord is entitled to rely on a Notice to Leave served by a previous Landlord. The wording in Section 62 does not support that. Section 62 refers to *“the landlord”* under the tenancy. As of 8 November 2024 the Applicant became the Landlord. Before then, when the Notice to Leave was served, the Applicant could not be said to have any ground to evict which *“proposes to seek an eviction order in the event that the tenant does not vacate the let property”* as required under Section 62(1) (c). The Applicant as of 8 November 2024 would be required to comply with Part 5 of the 2016 Act by serving its own Notice to Leave. Adrian Stalker on *“Evictions in Scotland”* (Second Edition) at page 304 states that *“As to Section 45, the transfer of ownership cannot of itself, have the effect of terminating the tenancy, given the terms of Section 44. Therefore, in the event of such a transfer, the new owner being the transferee of the “landlord’s interest” becomes the landlord under a PRT and, like the transferor, can only terminate the tenancy in accordance with Part 5 of the Act”*. Accordingly, the Tribunal is of the opinion that in order to move for an order to evict the Applicant must serve its own Notice to Leave and must establish a ground of eviction upon which it seeks to rely. It is not sufficient for the Applicant to rely on a ground of eviction its predecessor clearly had.

33. The Tribunal preferred the submissions made on behalf of the First Respondent. Breaking Ground 1 of Schedule 3 of the 2016 Act up into its component sections at paragraphs (2) (a),(b) and (c), the Tribunal accepts that the Applicant now has title to sell the Property under Ground 1, paragraph (2) (a). However, the Tribunal accepts the First Respondent's submissions that there was no evidence before the Tribunal that the Applicant intended to sell the Property. There were no submissions made on behalf of the Applicant that it actually had such an intention. The Applicant relied on the fact that the previous Landlord had shown that she had a genuine intention to sell and that the Applicant was entitled to rely on that intention by seeking to conclude the process for eviction. The Tribunal however is satisfied that any intention that the previous Landlord had expressed in the Notice to Leave was fulfilled by the Property being sold to the Applicant less than a month after the Notice to Leave had been served by her. The Applicant cannot therefore be said to have satisfied Ground 1 (2) (b).
34. The Tribunal does not have to consider whether in all the circumstances it is reasonable to evict as required by Ground 1 (2) (c), the Applicant having failed to meet the requirements of Ground 1 (2) (b).
35. Further the Applicant produced no evidence as required by Ground 1 (3) to support its position that it was planning to sell the Property. Whilst the Tribunal appreciates the Applicant may not be of the opinion that it required to do so by reliance on the fact that the previous Landlord had sold the Property to show that the intention was genuine, that was nevertheless the previous Landlord's intention. Even had the Applicant satisfied the elements of Ground 1, paragraph (2) that it had the intention to sell the Property, the Applicant would still have to produce evidence to support that position in terms of Rule 109 (b) (i) of the Regulations. However the Applicant's position was that based on the facts as presented to the Tribunal, which clearly showed the previous Landlord had that intention, there was no need for it to present its own evidence of its intention as the Applicant simply sought to "*conclude the process of eviction*" which had been commenced by the service of a Notice to Leave by the previous Landlord.
36. The Tribunal has to consider the current circumstances in determining whether a ground to evict exists with reference to the comments made by Lord Greene MR in *Cumming v Danson* [1942] 2 All ER 653 at 655F/G, It is simply not enough for the Tribunal to be satisfied that the object of Ground 1 of schedule 3 was met at the time the Notice to Leave was served.
37. For the reasons outlined above it is for the Applicant to start afresh and establish a ground to evict and not rely on a ground which a previous Landlord

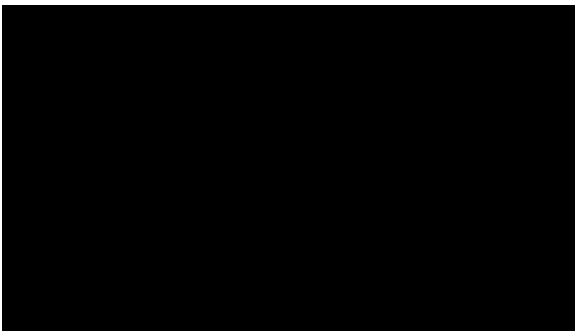
had relied upon. The Applicant has not done so and accordingly must fail in its application to evict.

Decision

38. The Tribunal accordingly refuse the application to evict. 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.



3 August 2025

Date