



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/3476

Re: Property at 120 Peacocktail Close, Edinburgh, EH15 3QT (“the Property”)

Parties:

Sajida Nasar; and Sajida Nasar as Executor of the Estate of the late Abdul Nasar, 37 Lady Nairne Crescent, Edinburgh, EH8 7PD (“the Applicant”)

Sarah Rebecca Finlayson, Martyn Deleaize Folker, 120 Peacocktail Close, Edinburgh, EH15 3QT (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)

Decision

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

Background

1. This is an application for an eviction order received on 30th July 2024. The Applicant representative lodged a copy of a private residential tenancy agreement between the parties commencing on 7th August 2023, a notice to leave with evidence of service, and a section 11 notice with evidence of service
2. A Case Management Discussion (“CMD”) took place by telephone conference on 18th March 2025. Neither party was in attendance. The Applicant was represented by Mr Gregory Smart, Solicitor. The Respondents were represented by Mr Andrew Wilson, Edinburgh Housing Advice Partnership.
3. Mr Smart informed the Tribunal that an error had been made in the notice to leave and the application, whereby it was stated that the application was made under ground 4. The correct ground is ground 5. The Applicant’s son intends to live in the Property. The Applicant lives with her two sons, a daughter-in-law, and a grandchild in another property. The property is overcrowded. Mr Smart asked for time to amend the application.

4. Mr Wilson indicated the Respondents were defending the action on the grounds of reasonableness. It was agreed that the application should proceed to a hearing on reasonableness.
5. By email dated 31st March 2025, the Applicant representative lodged an amended application.
6. By email dated 29th August 2025, the Applicant representative lodged a witness list, productions, and authorities.
7. By email dated 5th September 2025, the Respondent representative lodged written submissions stating that the Respondents were no longer opposing the application but seeking a delay in enforcement of an eviction order for a period of three months.

The Hearing

8. A hearing took place by video conference on 10th September 2025. The Applicants were represented by Mr Smart. The Respondents were represented by Mr Wilson. The Applicant and her son were in attendance, but did not join the video conference, pending Tribunal discussions with the representatives.
9. Mr Smart indicated that the Applicant did not oppose the motion for a delay in enforcement of the eviction order, but would wish the delay period of three months to include the 30-day appeal period. The Applicant and her son were present in case any evidence required to be heard.
10. Mr Wilson said the Respondents had initially been seeking a three-month delay beyond the 30-day appeal period, but were now satisfied that the appeal period should be included within the three months, as they have had acceptance of an offer to purchase a property.
11. Mr Smart addressed the Tribunal in terms of section 52 of the 2016 Act, regarding the error in the notice to leave, whereby ground 4 had been stated instead of ground 5. Mr Smart said the Applicant's son had taken the lead role in instructing the letting agent regarding service of the notice to leave, explaining that they would be moving into the Property. The letting agent had mistakenly assumed the Applicant's son was the Applicant, hence the reason for serving under ground 4.
12. Mr Wilson indicated there was no objection to the Tribunal giving permission to a substitution of ground 5.
13. Responding to questions from the Tribunal, Mr Smart confirmed the Applicant's living situation remains as previously stated, in that five people are living in the family home, which is a three-bedroom property.

14. The Tribunal adjourned to consider matters. The Tribunal considered it did not require to hear any further evidence.

Findings in Fact and Law

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- (i) Parties entered into a private residential tenancy agreement in respect of the Property on 7th August 2023.
 - (ii) A qualifying member of the Applicant's family intends to live in the let property.
 - (iii) A qualifying member of the Applicant's family intends to occupy the let property as their only or principal home for at least 3 months.
 - (iv) It is reasonable to grant an eviction order.

Reasons for Decision

16. The Tribunal was satisfied in the circumstances that permission to substitute ground 5 for ground 4 should be granted in terms of section 52(5)(b) of the 2016 Act.
17. Ground 5 of Schedule 3 of the 2016 Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property. The Tribunal may find that the ground applies if a qualifying 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.
18. The Tribunal is satisfied that Ground 5 has been established, in that the Applicant's son intends to occupy the Property as his only or principal home for at least 3 months.
19. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondents in terms of the Act.
20. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. There is a compelling need on the part of the Applicant for her son and his family to leave the overcrowded family home and move into the Property. The Tribunal noted that the Respondents are no longer opposing the eviction order, but require additional time to progress the purchase of a new home.
21. In all the circumstances, the Tribunal considered it reasonable to grant the order sought and to delay execution of the order for a period of three months.

Decision

22. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 10th December 2025

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.

Helen Forbes

Legal Member/Chair

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10th September 2025
Date