



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/22/0922

Re: Property at 22 Durness Terrace, Dundee, DD2 4XA (“the Property”)

Parties:

Mr Mahmoud Al-Saffar, 3 Loxley House, Hirst Crescent, Wembley, HA9 7HL (“the Applicant”)

Miss Suzanne Tasoz, 22 Durness Terrace, Dundee, DD2 4XA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFtridge (Legal Member) and David Fotheringham (Ordinary Member)

Decision

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

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 29 March 2022 under Ground 1 of schedule 3 of the Act.
2. It was accepted by the Tribunal on 1 June 2022.
3. The following documents were lodged by the Applicant to support the application:
 - a. Copy Private Residential Tenancy (PRT) commencing 1 January 2018 for the property
 - b. Notice to Leave dated 23 June 2021 with confirmation of service on the Respondent by email on 23 June 2021.
 - c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 27 April 2022.

- d. email 4 April 2022 from Applicant to Tribunal setting out the background to the application.
 - e. email correspondence between the parties between 4 May and 25 June 2021.
4. The Case Management Discussion (CMD) was scheduled for 15 August 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 7 July 2022. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 5. No representations from the Respondent were received by the Tribunal.
 6. The case documents are referred to for their terms and held to be incorporated herein.

B: The Case Management Discussion:

7. The CMD took place on 15 August 2022 by telephone conference call.
8. Both parties participated, both were unrepresented.
9. Mr Al - Saffar explained that Ms Tazos had been an excellent tenant and there were no issues at all. He very much regretted that he has to sell the property but he resides in a small 2 bedroom flat in London with 3 children aged 9, 5 and 1 1/2 years old and his oldest child had been diagnosed with Autism. The cramped conditions in the flat make this very difficult. He urgently requires to sell the property so he can use the proceeds as the down payment for a larger property in London. He intends to paint the flat and put down new carpets as he has been advised this may raise the potential sale price but this should not take more than at most 60 days and he intends to put up the property for sale just as soon as possible. He had already advised the Tribunal that the reason for not lodging a home report or estate agent letter is that he wants to instruct these once the refurbishment is completed. He had first advised the Respondent of this in March 2021 and given her further time to move out after the notice to leave had expired but he now really needs to sell. If it would help he would not object to allow the Respondent to stay until 15 October 2022 but this would be the last possible day for vacating the property.
10. Ms Tazos stated she has no objection to the application and fully understands that the landlord requires to sell the property due to his personal circumstances. She had been trying to find alternative accommodation since she was told about the intention to sell and has the maximum 70 points for the homelessness application but the Council advised her that she will not be re-housed until there is a Tribunal decision. She is number 15 on the housing list but currently there is no vacant accommodation available. She is an unemployed single mother of 5 children, 4 of which still live with her. They are 5 months, 6 years, 9 years and 16 years old. She has been advised that even if there is no long term property identified when she has to move out, she will be placed in a Network Property as a transitional measure. She was hoping to get some additional medical points for her Council application because her eldest child had now been referred for an autism diagnosis. This would give her more chance of a property being identified for her sooner. She was asking not to have to leave within 2 weeks. She had been in touch with the Dundee Law Centre and had received legal advice but was representing herself at the CMD.

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 January 2018.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The Applicant owns the property and is entitled to sell it.
4. The tenancy is ongoing.
5. On 23 June 2021 the Applicant served a Notice to Leave on the basis of ground 1 of schedule 3 of the 2016 Act on the Respondent by email.
6. The Notice to Leave states as the date when proceedings can be raised the date of 26 December 2021 and gives information about why the ground would apply.
7. The notice required under S 56 of the Act was issued to the local authority on 27 April 2022.
8. The Applicant requires to sell the property as he lives in a small 2 bedroom flat in London with 3 children, one of whom is on the Autistic Spectrum.
9. He needs the proceeds of the sale of the property to purchase a more adequate house for his family.
10. He intends to put the property on the market within at most 60 days of the property becoming vacant.
11. He intends to get the property painted and new carpets put down, which will require less than 3 months.
12. The Respondent had knowledge of this intention since March 2021.
13. The Applicant had already given the Respondent further time to vacate the property as he did not wish to take steps when the notice to leave expired on 25 December 2021 and thus did not raise proceedings until March 2022.
14. The Respondent resides in the property with 4 children. She is unemployed and a single mother.
15. She is already high on the list for allocation of a property through the Council.
16. She is currently waiting for a referral for her oldest child regarding a possible Autism diagnosis, which would add further medical points to her homelessness application with the Local Authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Ground 1 Landlord intends to sell

1(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, and

(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.

2. There was no dispute regarding the facts in the case. Both the Applicant and Respondent appreciate each others' situation. The Respondent did not raise any

objection to the application but asked for some more time to organise alternative accommodation.

3. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by both parties at the CMD.

4. In terms of S 54 of the Act a 6 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 1 of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Applicant had set out his situation and reason for the sale in his email of 4 April 2022 to the Tribunal and the Respondent fully accepts that the Applicant has a genuine need to sell the property as soon as possible to allow him to purchase a more appropriate property for him and his children due to the health needs of his 9 year old child. The Applicant satisfied the Tribunal about his entitlement and intention to sell the property and the time scale involved. The Tribunal was satisfied that the Applicant will put up the property for sale within 3 months of it becoming vacant.

6. The Applicant in this case has been both patient and pro-active in trying to manage the situation, had involved the Respondent in the process and has given the Respondent ample notice to find alternative accommodation.

7. The Respondent also has children and is a single mother. She has lived in the property for over 4 years. She has made significant efforts to find alternative accommodation. She is in the process of finding out if medical points may be added to her application for Local Authority housing. However, she also stated she appreciates that the Applicant genuinely needs to sell the property and she has no objection to the eviction order being granted. All she asked for was not to be evicted within the next 2 weeks, which is what she had been most worried about.

8. Both parties set out difficult personal circumstances. The Respondent also made it clear that without an eviction order from the Tribunal the Council would not re-house her. She has the maximum points for a homelessness application and is no 15 in the list for allocation of accommodation. The Applicant clearly has a vested interest to sell the property and use the funds to enable him to purchase adequate housing for his family. He had acted with transparency and reasonableness towards the Respondent and had already given her significant additional time to find accommodation. The Tribunal had initially envisaged to made the end date 30 September 2022 but the Applicant himself stated he would agree to the end date being 15 October 2022 to allow the Respondent a further period to obtain alternative accommodation. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 1 of schedule 3 of the Act but that the Respondent should be given 2 months to remain in the property and to maximise her chance to be allocated suitable alternative accommodation by the Council.

14. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

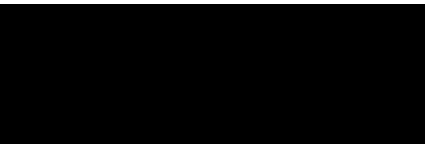
15. The Tribunal, having regard to the appeal period and to the position of both parties, determines that in terms of S 51(4) of the Act the tenancy ends on 15 October 2022.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 of Schedule 3 of the 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.



**Petra Hennig McFatridge
Legal Member/Chair**

**15 August 2022
Date**