

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 of the Private Housing (Tenancies) (Scotland) Act 2016, the 2016 Act

Chamber Ref: FTS/HPC/EV/22/4249

Re: Property at 24 Parkgrove Terrace, Edinburgh, EH4 7NX (“the Property”)

Parties:

**Mr Robert Wallace, 17 Clermiston Green, Edinburgh, EH4 7PB (“the Applicant”);
and**

**Robb Residential, 176 St. Vincent Street, The Beacon, Glasgow, G2 5SG (“the
Applicant’s Representative”) and**

**Miss Melanie Joanne Barker, 24 Parkgrove Terrace, Edinburgh, EH4 7NX (“the
Respondent”); and**

**Community Help and Advice Initiative (“CHAI”), 28 Westfield Avenue,
Edinburgh, EH11 2QH (“the Respondent’s Representative”)**

Tribunal Members:

**G McWilliams- Legal Member
G. Darroch - Ordinary Member**

Decision:

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determines to refuse the Application.**

Background and Case Management Discussion 16th May 2023

1. This Application has been brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call, at 2.00pm on 16th May 2023. The Applicant’s Representative’s Mrs S. Stewart attended as did the Respondent and her Representative’s Mr A. Wilson.
3. Mr Wilson had sent a written submission to the Tribunal’s Office on 12th May 2023 with a written timeline of events and copy report of Professor A Carson, Consultant Neuropsychiatrist, Royal Infirmary of Edinburgh, dated 17th March 2023.
4. Reference is made to the Notes on the CMD, also dated 16th May 2023.

Hearing 29th August 2023

5. An evidential Hearing proceeded remotely by telephone conference call at 10am on 29th August 2023, was continued at 1.15pm that day and concluded that afternoon. The Applicant, Mr R. Wallace, and his wife, Mrs J. Wallace, attended as did their Representative’s Mrs S. Stewart and Mr A Henderson. The Respondent and her Representative’s Mr A. Wilson also attended.

Evidence and Submissions

6. By agreement of Mr Wallace, the Tribunal, Mrs Stewart and Mr Wilson, Mrs Wallace gave evidence on behalf of her husband. Mrs Wallace stated that her daughter, Miss S. Wallace, has suffered from ADHD and dyslexia all of her life. She said that her daughter’s partner of 6 years separated from her daughter when she was 6 months pregnant, in 2019. She stated that her daughter’s baby, Miss L. Wallace, had a difficult birth, was in intensive care and had two operations. Mrs Wallace said that following her granddaughter’s birth, her daughter’s mental health has deteriorated. She said that her daughter has specialist mental health input in this regard. Mrs Wallace said that originally her daughter and granddaughter were residing with herself and her husband, the Applicant Mr Wallace, at their home in Edinburgh. They then moved into their own tenancy. Mrs Wallace said that the tenancy accommodation was not beneficial for her daughter’s mental health and granddaughter’s well-being. She said that the property had no drying area or garden and there was internal mould. Mrs Wallace stated that in August 2020 she and her husband decided that it would be in their daughter and their granddaughter’s best interests to move into the Property. Mrs Wallace stated that she and her husband felt that they “held the key” to making things better for the daughter and granddaughter. She said that they hoped to recover the Property, and carry out any necessary decoration so that their daughter and granddaughter can move in and, in particular, enjoy the use of the garden. Mrs Wallace said that she and her husband only rent one home, the Property. Mrs Wallace acknowledged that the Respondent Ms Barker has health difficulties. She stated that she felt that she and her husband however were entitled to recover their own property so that their daughter and granddaughter could live there. Mrs Wallace said that a rent increase for the Property had been suggested by their Representative in 2022 and that there was no coincidence between the negative decision of Rent Service Scotland, regarding a proposed rent increase, and her

and her husband's decision to try to recover the Property for their daughter and granddaughter to move into.

7. Ms Barker asked to read from a statement which she had prepared in advance. She said that her life had changed in August 2021 as a result of becoming chronically ill. She stated that her recovery from illness had been adversely affected by the behaviour of the Applicant. Ms Barker said that she had no means to source alternative accommodation and she could not call on any family help in this regard. She stated that her rent was up to date and that she lived next door to her GP practice, close to transport links and to the mental health professionals who assist her. Ms Barker also said that she relied on the kindness of her neighbours for assistance with daily living. She stated that removal from the Property will negatively impact her health. She said that she considered that the Application for an eviction order has been made in bad faith as a result of the Rent Service Scotland decision on the proposed rent increase last year. Ms Barker said that she had liaised with Mr Henderson, of the Applicant's Representative, and he had said that the rent increase was set at an "arbitrary" figure". She said that she carried out research at the time of the proposed increase and that properties in the vicinity of the Property with 3 bedrooms had a monthly rental cost of £850.00, whereas the rent for the Property, which has 2 bedrooms, was £950.00. She said that any decision to evict her would make a mockery of the Tribunal system. Ms Barker said that she wanted to be left in peace so that she can recover and again fully participate in life. Ms Barker stated that she was aware that Edinburgh Council will not house persons unless an eviction order has been granted against them. She stated that she had been liaising with her Representative since the Application for an eviction order was submitted and relied on them for advice regarding housing. Ms Barker confirmed that she resides alone and has no pets.
8. Mrs Stewart submitted that the Applicant, Mr Wallace, seeks to recover possession of the Property so that his family members, his daughter and granddaughter, can move in to reside there.
9. Mr Wilson referred to his previous written submission, lodged prior to the CMD on 16th May 2023. He stated that the ground of eviction, that a family member intends to reside in the Property, had not been met. He said that the Applicant Mr Wallace had had ample opportunity since the Application was submitted, in particular following the CMD, to provide detailed evidence regarding the intention of his daughter and granddaughter to move into the Property. He said that the relevant legislation, being Ground 5 in Schedule 3 to the 2016 Act., envisages that evidence will be provided by the family member who intends to reside in the property which is the subject of an application for an eviction order. He submitted that the Application should be rejected as such evidence had not been given. Mr Wilson also referred again to Ms Barker's health problems and stated that it was unreasonable that an eviction order should be granted. Mr Wilson also submitted that it was not a coincidence that the Application was lodged after the rent increase proposal was rejected by Rent Service Scotland.

Further Evidence and Submissions

10. After the above submissions were made by the Mrs Stewart and Mr Wilson, the Tribunal paused the Hearing to consider whether or not any further clarification and evidence required to be heard in order that they could fully consider all relevant matters and make a decision in respect of the Application. Having considered matters the Tribunal sought clarification of two points, namely the Applicant's Representative's position as to whether the proposed rent increase was suggested by Mr Wallace or the Representative and also whether or not Miss S. Wallace would be able to provide the Tribunal with information and evidence.
11. The Applicant's Representative's Mr Henderson stated that the Representative had contacted landlords, including the Applicant, around May 2022 to suggest that they propose rent increases in line with inflation. He said that Mr Wallace sought that a minimum increase be requested. Mr Wallace re-iterated what Mr Henderson had said. He stated that he and Mrs Wallace were not concerned when the rent increase proposal was refused by Rent Service Scotland.
12. Mrs Stewart stated that Mr Wallace and Mrs Wallace sought the opportunity of having their daughter Miss S Wallace provide information to the Tribunal. Mrs Wallace called Miss S Wallace and it was established that the latter would be available to give information and evidence to the Tribunal at 1.15pm on 29th August, after Miss Wallace had finished her part time nursery assistant work commitment for the day. In order that they could fully consider all relevant matters and, in the interests of justice, the Tribunal adjourned the Hearing until 1.15pm on 29th August.

Additional Evidence and Submissions

13. Miss S Wallace stated to the Tribunal that she had become aware of her parents' hope, that she and her daughter would be able to reside in the Property, around April/May 2023. Miss Wallace said that as soon as she had discussed this with her parents her intention was to live in the Property. She stated that she suffers from mental health problems, dyspraxia and dyslexia and that her current accommodation, with her daughter, was unsatisfactory. She stated that her current tenancy suffered from mould on the walls as there was no outside drying area and that it did not have a garden that she and her child could access.
14. Mrs Wallace stated that she and Mr Wallace had owned the Property since 2016 and that it was originally intended to have been bought as a source of "pension" income when they were retired. She said that the Property had been rented without problems from 2016. She stated that their position changed when they became aware of the difficulties being suffered by their daughter and granddaughter. She said again that she and her husband decided to take steps to recover possession of the Property, so that her daughter and granddaughter could live in it, in August 2022. She said that as a formal recovery process had to be gone through she did not wish to tell her daughter of their fresh intention in August last year. She stated that were going to keep the move to the Property as a "surprise". Mrs Wallace said that when their daughter had a health breakdown, in April/May 2023, they told her

of the plan, to have her and their granddaughter move into the Property, to lift her spirits. Mrs Wallace stated that the information given to the Tribunal by her daughter was correct. Mrs Wallace said that it became her daughter's intention to move into the Property after Mr and Mrs Wallace discussed this housing option with her in April/May 2023.

15. Mrs Barker reiterated that she wishes time to recuperate and wants to be “left in peace”. She said that she had previously been made homeless on 3 occasions when residing in London. She said that she wanted to get into better health so that she can work again and also, at that time, possibly look for alternative accommodation.
16. Mrs Stewart stated that she had found correspondence regarding the proposed rent increase. She said that Mr and Mrs Wallace had responded by e-mail to her organisation to confirm that the Representative’s suggested rent increase was too high. Mr Wilson said that he was content that Mrs Stewart did not require to submit copy correspondence to the Tribunal in this regard.
17. Mrs Stewart submitted that Mr Wallace no longer wishes to be a landlord and that he wants to have his daughter and granddaughter move into the Property. She stated that Mr and Mrs Wallace acknowledged that Ms Barker has health difficulties and that they wish her well in her recovery but that they do seek to move their family members into the Property. She submitted that it would not seem fair if they could not do so.
18. Mr Wilson referred to Miss S Wallace’s evidence and submitted that it was clear that it was not her settled intention to reside in the Property at the time the Notice to Leave (“NTL”) was served, in August 2022, and when the Application was lodged for recovery of possession of the Property, in November 2022. Mr Wilson submitted that Ground 5 in Schedule 3 to the 2016 Act refers to the family member rather than the landlord’s intention, unless the family member does not have capacity to have that intention. Mr Wilson submitted that, in the circumstances, the ground for recovery of possession of the Property had not been met. He also referred to his written submission and said that, in addition, it would not be reasonable for the Tribunal to grant an eviction order given Ms Barker’s difficult health circumstances and lack of support and options to obtain alternative accommodation.

Findings in Fact and Law

19. The parties have a tenancy agreement which began on 28th May 2021. The Respondent is the sole occupant of the Property. The Respondent has various health difficulties which she is seeking to recover from.
20. The Applicant Mr Wallace and his wife Mrs Wallace decided, in August 2022, to seek recovery of possession of the Property so that their daughter Miss S. Wallace, and their granddaughter, Miss L Wallace, could move to reside there. Miss S. Wallace has health difficulties and her current rented accommodation suffers from mould and has no garden or drying area.

21. Mr and Mrs Wallace did not tell their daughter that they were planning to recover the Property so that she and their granddaughter could reside there until April/May 2023. They were keeping the move as a surprise for their daughter. When Miss S. Wallace's mental health deteriorated, in April/May 2023, Mr and Mrs Wallace told her of the planned move in order to assist her in achieving better health.
22. Miss Wallace did not have an intention to reside in the Property when the Applicant's NTL was served on the Respondent on 25th August 2022 and when the Application for an eviction order was lodged with the Tribunal on 22nd November 2022.
23. The Ground upon which the Application proceeds, namely Ground 5 in Schedule 3 to the 2016 Act, is not satisfied. Accordingly the Application is refused.

Reasons for Decision

24. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
25. Schedule 3 (5) (1) 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.
26. Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord, such as the Applicant, for an eviction order in respect of a tenancy such as the tenancy agreement of the parties.
27. The Tribunal considered all of the written and oral submissions.
28. Having considered and weighed all of the evidence the Tribunal found, on a balance of probabilities, that Miss S. Wallace did not have an intention to live in the Property at the time the NTL was served on the Respondent on 25th August 2022 nor at the time this Application was lodged with the Tribunal on 22nd November 2022. Miss Wallace suffers from health difficulties. She works part time as a nursery assistant and there was no evidence given to the Tribunal in respect of any lack of capacity on her part. Miss Wallace has had an intention to reside in the Property since around April/May 2023. Miss Wallace and Mrs Wallace's evidence regarding the former's intention was given candidly, clearly and in a straightforward way. As Miss Wallace did not have an intention at the relevant times the Application has proceeded in error. Accordingly, the Application falls to be refused.
29. Given that the Tribunal found that Ground 5 in Schedule 3 of the 2016 Act was not met they did not require to consider the issue of the reasonableness or otherwise of the grant of an eviction order.

30. Mr Wallace, Mrs Wallace, Miss Wallace and Ms Barker all gave evidence in a candid, clear and straightforward manner. They are to be commended for doing so. The situation in which Miss Wallace and Ms Barker find themselves in, in particular with both suffering health difficulties, is very difficult indeed. The Tribunal hope that, going forward, all parties achieve the best possible outcomes.

Decision

31. The Tribunal refuses the Application.

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.



15th September 2023

Legal Member

Date