



**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/21/2694

**Re: Property at Flat 2, 5 Eyre Terrace, THE LARGER DOUBLE ROOM TO THE REAR OF THE PROPERTY NEXT TO THE BATHROOM, Edinburgh, EH3 5ER (“the Property”)**

**Parties:**

**Ms Caroline Hurley, 30 Swinburne Street, Derby, DE1 2HJ (“the Applicant”)**

**Ms Judith Shanko, Flat 2, 5 Eyre Terrace, THE LARGER DOUBLE ROOM TO THE REAR OF THE PROPERTY NEXT TO THE BATHROOM, Edinburgh, EH3 5ER (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Frances Wood (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted in favour of the Applicant.**

• **Background**

1. This was a Case Management Discussion (CMD) in relation to the application by the Applicant dated 29<sup>th</sup> October 2021 for an order for eviction of the Respondent who is the tenant in the Property.
2. The following documents were lodged with the Application or shortly thereafter namely:-
  - a. Notice to Leave dated 18<sup>th</sup> January 2021
  - b. Certificate of intimation of service by Sheriff Officers of the Notice to Leave on 20<sup>th</sup> January 2021

- c. S11 notice and copy e-mail serving it on Edinburgh City Council dated 29th October 2021.
  - d. Copy e-mail from Annan solicitors and estate agents confirming they had been instructed in the sale of the Property dated 28<sup>th</sup> June 2021.
3. The Applicant is the owner and landlord of the Property.
  4. The Tribunal sent a direction asking for confirmation of what facilities the Respondent had the use of at the Property and confirmation the Applicant was not a resident landlord. The Direction also requested further evidence of the ground of eviction such as a letter of engagement from the solicitors or evidence of a home report being instructed.
  5. The Applicant's solicitor responded on 5<sup>th</sup> January 2022 by e-mail advising that the landlord had never lived at the Property during the period it had been let to the Respondent, and that the Respondent had the use of the whole of the property including living room, kitchen and bathroom and that she was storing her possessions in the second bedroom.
  6. On 11<sup>th</sup> January Ms Morrison sent a further e-mail enclosing a letter of engagement dated 6<sup>th</sup> January 2022 from Emslies solicitors and estate agents confirming they were now instructed in sale of the Property by the Applicant.

#### **The Case Management Discussion**

7. The CMD was held on 12<sup>th</sup> January 2022 by teleconference in view of the continued need for social distancing at the current time. Ms Kirsty Morrison of TC Young solicitors attended for the Applicant who was also present. The Respondent did not attend nor was she represented. The Tribunal noted that the application and papers have been served on the Respondent by sheriff officers on 30<sup>th</sup> November 2021 and therefore considered it was appropriate and fair to continue with the CMD in the absence of the Respondent.
8. The Legal Member explained the nature and purpose of the CMD and asked Ms Morrison to explain what her client was seeking. She confirmed that as per the application the Applicant was seeking an order for eviction of the tenant, on ground 1 of Schedule 3 of the 2016 Act namely that the landlord intends to sell the Property. Ms Morrison confirmed that there was no written tenancy entered into between the parties but that the tenancy met the terms of a Private Residential Tenancy as the landlord was not resident at any time in the property.
9. The Applicant advised under questions from the Tribunal as to how the tenancy came to be, that she had let out one bedroom to a friend who in turn advised the Respondent who was a colleague of his that there was another room available to let there. The first tenant acted as the lead tenant initially by collecting the rent from the Respondent and paying the Applicant but the Applicant confirmed that the Respondent was aware that she was the landlord and they exchanged messages and details. The Applicant confirmed the rent for the Respondent for that one room and use of the shared facilities was £300 but it went up to £350 when her mortgage was raised in late summer 2019.
10. Ms Morrison advised that in her view the application is necessary and it would be reasonable for an order to be granted. She advised that the notices have been served appropriately, namely the Notice to Leave was served by Sheriff Officers after an original notice was sent by recorded delivery but could not be signed for. She advised that there are now arrears of rent amounting to £7,293

and that the Applicant is under financial pressure having to pay the mortgage on this Property and her rent in Derby. Ms Morrison confirmed the Applicant wishes to buy somewhere to live but not in Edinburgh and needs the proceeds of sale to do so. She has given a lot of notice to the Respondent and is suffering from stress and anxiety and other health problems which she mentioned in the paper apart to the application and the Applicant's GP is very concerned about the impact this may have on the Applicant's health. She mentioned the property is not in a good state due to the way the Respondent has kept it and it will need work done to it.

11. The Applicant confirmed that there are issues with the state of the Property and confirmed her mother had visited before Christmas to inspect it and found a leak in the living room coming through a light fitting. She also mentioned soot on the walls and confirmed it will require redecorating before she sells it. The tenant had not been co-operative in reporting or arranging access for repairs, though key safety checks had been carried out.
12. The Applicant confirmed under questioning that she has a firm and settled intention to sell and has wanted to do so since the original tenant left in April 2020 when she first mentioned her wish to the Respondent. The Applicant advised that her mother told her the Respondent had mentioned that she had applied to the council for rehousing but had not yet met with any success, but has not heard anything directly from the Respondent herself. She did however advise the Respondent has changed the locks without consent.

#### **Findings in Fact**

1. The Applicant is the landlord and owner of the Property.
2. The Respondent rented a room from the Applicant in the Property with shared facilities on or around January 2019. No written tenancy was entered into. This is a private residential tenancy.
3. These proceedings were raised on 29<sup>th</sup> October 2021 and the application included a copy of the Notice to Leave.
4. The application and all accompanying papers have been served on the Respondent by sheriff officer on 30<sup>th</sup> November 2021.
5. The Respondent is still living in the Property and now occupying the whole of the flat.
6. A Section 11 notice has been served on City of Edinburgh Council
7. A notice to leave was served on the Respondent sheriff officer service on 20<sup>th</sup> January 2021
8. The Notice to leave mentions Ground 1 and confirms the landlord wishes to sell the Property.
9. The Application was accompanied by an e-mail from a firm of solicitors indicating they were instructed in the sale of the Property.
10. The Applicant has now engaged a different firm of Solicitors namely Elmslies of Haymarket Terrace Edinburgh to deal with the sale of the Property.
11. The Applicant wishes to sell the Property to use the free proceeds of sale towards buying another property out with the Edinburgh area.
12. The Notice to leave indicating that the landlord wished to sell the Property was served almost 12 months ago.
13. The Landlord has not been able to rent out the other bedroom in the Property pending a sale of the Property since an earlier tenant left due to the condition of

the Property and the refusal of the Respondent to remove her belongings from the second bedroom, and the Respondent has not co-operated with attempts to repair the Property.

14. The landlord is experiencing financial hardship due to the Respondent not paying rent for the use of the full Property.
15. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

## 16. Reasons for Decision

1. The Tribunal was satisfied that there was a tenancy between the Applicant and the Respondent in that the Applicant rented out one room plus shared facilities to the Respondent from January 2019 and that the rent was initially £300 per month increasing to £350. A written tenancy is not needed to create a valid private rented tenancy and the Property is being used by the Respondent as her only or principal home.
2. The Respondent has been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 of Schedule 3 of the Act as the relevant ground of eviction.
3. The Notice to Leave was served by Sheriff Officer on 20<sup>th</sup> January 2021
4. The Notice also set out the relevant notice period which expired on 23<sup>rd</sup> July 2021.
5. The Application was lodged on 29<sup>th</sup> October 2021 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefore complies with Section 55 of the Act.
6. Ground 1 of Schedule 3 of the Act states "
  1. It is an eviction ground that the landlord intends to sell the Property.
  2. The First Tier Tribunal may find that the ground named by subparagraph (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.
    - 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 Subparagraph (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 from anyone responsible for marketing the let property would be required to possess under Section 98 of the Housing (Scotland) Act 2006.
7. The Tribunal accepted the written statement on the Application and the verbal evidence from the Applicant today that she intends to sell the Property and that she requires the proceeds of sale to use towards buying a new property for herself as she is currently renting in Derby. The Tribunal heard from the Applicant that she has not been able to do essential repairs in the Property and is concerned about a leak coming through a light fitting and concerned that the whole flat needs redecorating due to the way the Respondent has neglected

the Property. The Applicant has instructed solicitors in the sale of the Property once it is ready to sell but indicated she will need to redecorate and do repairs first.

8. The Tribunal accepts that the Applicant is the owner of the Property, that she has shown a clear intention to sell the house and the delay caused by the Respondent not leaving and occupying the whole property while only having been given permission to rent one room and the shared facilities is causing her stress and anxiety. The Tribunal accepts this has had negative impact on the applicant's health as set out in the Application.
9. The Tribunal accepts that the Notice to Leave has been validly served on the Respondent; that the Respondents have had notice of the Applicant's intention since at least January last year and have had further time since the raising of this application but have not made any written representations or attended his CMD.
10. Given the requirements of the Act have been met and the ground of eviction has been established, and noting that the Tribunal can make any order at a CMD that it can after a full hearing, the Tribunal agreed a full hearing was not required and went on to consider whether the granting of an order was reasonable.
11. The Tribunal has weighed up the right of the landlord to sell her Property, and taken account that the landlord has given 6 months' notice as required by law, has provided all the documentation asked for by the Tribunal to support her claim; has provided a valid reason for wishing to sell the Property namely to use the proceeds to buy another house for herself against the inconvenience to the Respondent in having to move. The Respondent has now had notice of this impending need to move since last January, and the Respondent is reported to have mentioned that she has been in touch with the local authority and is awaiting help from them. The Tribunal finds that it is reasonable to grant the eviction as the tenant have had reasonable notice of the Applicant's wish to sell her Property; and the local authority has a duty to provide support and assistance to the tenants in these circumstances. In addition the current delay is causing increasing anxiety and stress to the Applicant and she has suffered financially from the tenant occupying the whole flat without paying the full rent. Taking all the circumstances into account the Tribunal is satisfied an order for eviction is reasonable.

- **Decision**

**An order for eviction is granted.**

**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.

Legal Member: Jan Todd/Chair

Date: 12<sup>th</sup> January 2022

J Todd