

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 (1) of the Private Tenancies (Housing) (Scotland) Act 2016 (The Act)

Chamber Ref: FTS/HPC/EV/21/3188

Re: Property at 3 Hillpark Avenue, Blackhall, Edinburgh, EH4 7AT (“the Property”)

Parties:

Mr Stewart Swan, Calle Puerto Cabras, Residencial Iris Fase 1, Cases 12, Playa Blanca, 35580 Lanzarote, Spain (“the Applicant”)

Mr Waseem Abuaglain, 3 Hillpark Avenue, Blackhall, Edinburgh, EH4 7AT (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

Background

The Applicant seeks an Eviction Order in respect of Ground 1 of Schedule 3 to the Act on the basis that the Applicant states that he wishes to sell the Property.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 2pm on 26 January 2022. The Applicant was present together with his representative, Ms Ridley of Blacklocks Solicitors. The Respondent was personally present.

The CMD called alongside a related Application between the parties in respect of a Payment Order for rent arrears.

The Tribunal noted that a Notice to Leave based on Ground 1 had been served on the Respondent by Sheriff Officers on 14 June 2021. The Notice to Leave had provided the Respondent with the requisite period of notice and called upon the Respondent to vacate the Property by 15 December 2021. The Respondent had failed to vacate the Property.

The Tribunal discussed the substance of the Application with the parties and established if both sides had received all the paperwork, understood the issues and were ready to proceed. This being confirmed, the Tribunal sought to understand the Respondent's position.

The Respondent did not appear to be objecting to the Application for an Eviction Order. The Tribunal tried to tease out the Respondent whether there was any reason why the Application should not be granted but the Respondent would not address the issue or provide any reason as to why the Application should not be granted. No exception was taken to any of the reasons put forward by the Applicant as to why it was said he wanted to sell the Property.

The Respondent's focus appeared to be entirely on the related Application for a Payment Order. The Respondent even confirmed that he would be "*ok with leaving the Property*" if "*he got enough time*".

The Tribunal heard from the Applicant about why he wanted to sell the Property. The Applicant's position seemed straight forward. He was living in Lanzarote and wished to reduce his exposure to the vagaries of the Scottish private rented sector. The Property was not bringing in any rent, as he described the Respondent as having extensive rent arrears. The Applicant candidly admitted he had one other investment property which he intended to keep as it was far less challenging to manage than the Property subject to this Application. He described how he lived in rented accommodation in Lanzarote and he would use the money to try and purchase a home in his local area.

The Tribunal was satisfied that there was no reason to conclude that the Applicant was anything other than credible and reliable.

The Tribunal took care to consider the reasonableness or otherwise of granting the Application. The Respondent lives alone although two older children sometimes visit. It seemed very likely to the Tribunal that unless an order was made, the rent arrears may accrue yet further, albeit the Respondent contested the validity of some of the rent arrears.

The Tribunal adjourned to consider the Application and everything that had been said. Having done so, the Tribunal made the following findings in fact.

Findings in Fact

- I. The parties entered into a tenancy whereby the Respondent leased the Property from the Applicant under a Private Residential Tenancy;
- II. The tenancy between the parties commenced on 1 July 2019;
- III. The parties have been in dispute about rent arrears for some time;
- IV. The net result of the dispute is that the Respondent has not paid thousands of pounds of rent to the Applicant as anticipated;
- V. The Applicant considers the sums outstanding to be lawfully due as rent arrears whilst the Respondent considers that he has lawfully withheld some of the rental payments;
- VI. The Applicant is disenchanted with being a landlord of the Property and wants to reduce his exposure to the buy-to-let market.
- VII. The Applicant has little appetite for disputes and wishes to enjoy his retirement in Lanzarote;
- VIII. The Applicant validly served a Notice to Leave on the Respondent by Sheriff Officers on 14 June 2022;
- IX. The Notice to Leave provided the requisite period of notice to the Respondent before any Application would be made to the Tribunal;
- X. The Applicant has complied with s 11 of the Homelessness Etc. (Scotland) Act 2003;
- XI. The Applicant wishes to sell the Property.

Decision

Having made the above findings in fact and having considered the reasonableness or otherwise of granting the Application, The Tribunal unanimously decided to grant 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.

Andrew McLaughlin

22nd January 2022

Legal Member/Chair

Date