



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/1146

Re: Property at 12/1 Northfield Avenue, Edinburgh, EH8 7PR (“the Property”)

Parties:

Mr Scott Gray, 18 Southfield Farm Grove, Edinburgh, EH15 1SR (“the Applicant”)

Mr Andrew Greig, Ms Jacqueline Gray, 12/1 Northfield Avenue, Edinburgh, EH8 7PR (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction on the basis of paragraph 4 of schedule 3 of the 2016 Act be made in favour of the Applicant.

1. Background

- 1.1 This is an application for an eviction order in respect of a private residential tenancy between the parties. The application was accompanied by copies of the written tenancy agreement, the notice to leave issued and an email from the Applicant advising as to his intention to move into the property. The eviction order was sought solely on the basis of paragraph 4 of schedule 3 of the 2016 Act.
- 1.2 The first named Respondent had lodged a submission by email in advance of the Case Management Discussion. Although not provided to the Applicant, due to it referring to medical information, its contents were discussed with the parties with the consent of the first named Respondent.

2. The Case Management Discussion

- 2.1 The case management discussion took place on 16 July 2021 by teleconference. The parties were all personally present however, the first named Respondent spoke on behalf of both Respondent.
- 2.2 The Tribunal heard firstly from the Applicant. He confirmed that the application was insisted upon and he intended to move into the property. He advised that the property had been purchased in 2016. It had been let prior to the present tenancy agreement commencing. Following its purchase, the Applicant had spent significant time travelling. He had returned to Scotland in 2019. Since his return, he had resided with his parents in Duddingston. They owned a property which was occupied by the Applicant, his parents and two brothers. The Applicant was 27 years of age and wanted to move out of the parental home. He worked for Gold and Gray Soccer Academy earning around £1400.00 gross each month. He required to pay rent to his parents whilst also ensuring that the monthly mortgage payment of £401.00 due in respect of the property was paid. The Applicant advised that there were arrears of £5935.78 due from the Respondents. With or without the arrears, he still intended on moving into the property. The property was the only property that he owned. He had always planned to move into the property after purchasing it. The property had been let through an agent and he had never advised that he did not intend to move into the property.
- 2.3 The first named Respondent confirmed he resided at the property with his partner, the second named Respondent, and his daughter, aged 18. He was aged 59 and his partner 57. The first named Respondent was unemployed. He advised that this was due to prostate cancer, from which he had suffered since 2015 and had forced him to give up employment after the tenancy commenced. The second named Respondent worked part time, earning around £780.00 per month. His daughter worked around 30 hours each week, earning around £210.00 per week. The first named Respondent's income was comprised of Universal Credit, which paid around £845.00 per month in respect of housing costs and £224.00 per fortnight as a personal allowance, a private pension of £106.00 per month and he had recently been awarded Personal Independence Payments.
- 2.4 The first named Respondent advised that he had contacted Edinburgh City Council after receiving the notice to leave. He had registered for housing with them. He had made a homeless application. He believed that the waiting list for housing was around two years long. He had had difficulty in sourcing alternative accommodation in the private sector due to, in part, the reluctance of some private landlords and letting agents to let those in receipt of welfare benefits. He had viewed at least five properties recently, none of which were suitable. As a result of his health condition, he required ground floor accommodation as he struggled to manage stairs. Both the second named Respondent and his daughter

worked in central Edinburgh and required to travel 20 to 25 minutes by bus to work. The first named Respondent advised he had read over the tenancy agreement at the time of signing. If they had been aware that the Applicant intended to move to the property, the Respondents would not have moved there from their previous accommodation. If they could remain in the property, the arrears would be paid at the rate of £200.00 per month. He disputed that it was reasonable to grant the order sought.

2.5 After hearing from the parties, the Tribunal adjourned for a short period to consider the matter.

3. Reasons for Decision

3.1 The power of the Tribunal to grant an eviction order is governed by sections 51 to 53 of the 2016 Act. In terms of section 52(3) of the 2016 Act, the Tribunal is not to grant an order unless it is accompanied by a copy of the notice to leave given to the tenants. In the present application, the notice to leave was served by Sheriff Officer on 11 February 2021. It specified that no application would be made earlier than 12 May 2021, being a period of notice of 3 months, which conformed with the requirements of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”). Accordingly, the notice to leave was valid.

3.2 Although previously a mandatory ground for issuing an eviction order, the Tribunal was mindful that the 2020 Act now required consideration as to whether it was reasonable to issue an eviction order on the basis of Paragraph 4 of Schedule 3 of the 2016 Act, being the ground relied upon by the Applicant in the present application. The live issue in the present application therefore appeared to one of reasonableness. After hearing submissions from the parties, the Tribunal concluded that there was no significant factual dispute between them and that a hearing was not required.

3.3 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole circumstances in which the application was made.

3.4 Taking the first named Respondent’s submissions at their highest, the Tribunal did not consider that the circumstances of the application rendered it unreasonable to grant an eviction order. Whilst the Tribunal was sympathetic towards the situation that the Respondents found themselves in, the Tribunal placed particular weight on the following factors:-

- The Applicant had a reasoned intention for moving in to the property;

- The Applicant was the owner of the property to which the application relates only and held no other property within which he could reside;
- The Respondents had approached the local authority for assistance and had registered for housing, with it being within the knowledge of the Tribunal that the local authority would owe an obligation to the Respondents under the Housing (Scotland) Act 1987 to ensure they did not become homeless;
- Although the first named Respondent was in receipt of welfare benefits, his daughter and the second named Respondent were in employment and would likely not be excluded from seeking accommodation in the private purely due to affordability;
- Should the Respondents encounter difficulties with private rented sector policies excluding those in receipt of welfare benefits, it was again within the Tribunal's knowledge that there were advice agencies within the Edinburgh area who could provide assistance with this;
- Nothing which was said by the first named Respondent appeared to dispute the Applicant's intention to move in to the property.

3.5 The Tribunal placed no weight on the existence of rent arrears. Should the Applicant have wished to rely on such arrears, he would have required to specify the relevant ground within the notice to leave. This would have had the effect of extending the required period of notice from three to six months. The Tribunal therefore considered that present application required a balancing of the competing rights and needs of the Applicant and the Respondents.

3.6 The thrust of the first named Respondent's submission was that he and his family would require to move. Unfortunately, this is a fact which applies in all cases in which the Tribunal makes an eviction order. The Tribunal does not therefore consider that this consequence would render the granting of an eviction order unreasonable, particularly in light of the absence of any factors meaning the Respondents required this particular property and with the safety net available in the form of the local authority and their duties owed to those threatened with homelessness.

3.7 The Tribunal did take into account the first named Respondent's health conditions. Whilst not sufficient to constitute a defence to the action, the Tribunal was mindful that the Respondents may not have the same selection of suitable alternative accommodation, given the first named Respondent's need to avoid stairs. When issuing an eviction order, the Tribunal, in terms of section 51(4) of the 2016 Act, is to specify a date on which the private residential tenancy is to come to an end. There appears to be no provision within the 2016 Act which restricts the Tribunal's ability to select a date of its choosing, based on the circumstances of an application. The Tribunal considers it just, in light of the first named Respondent's needs, to specify a date not earlier than two months from the date of the Case Management Discussion, to allow the

Respondents further time to engage with Edinburgh City Council in furtherance of the local authority's responsibilities.

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.

Alastair Houston

19 July 2021

Legal Member/Chair

Date