



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/23/2065

Re: Property at 3/9 Inglis Green Gait, Edinburgh, EH14 2LG (“the Property”)

Parties:

Elisabet Haig, 68 Mansfield Road, Edinburgh, EH14 7LF (“the Applicant”)

Adebanke Ola-Bakir, 3/9 Inglis Green Gait, Edinburgh, EH14 2LG (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 25 March 2022.
2. The application was dated 22 June 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 9 March 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by email on that day, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the

notice said little more than that the Applicant wanted to sell on the open market with vacant possession, and referred to no accompanying papers. The Notice to Leave intimated that an application to the Tribunal would not be made before 4 June 2023.

4. The application papers included a copy of an agreement dated 6 June 2023 with DJ Alexander (whom are also the Applicant's letting agents) on marketing of the Property for sale. Shortly in advance of the case management discussion, the Applicant also lodged a one-page written statement setting out her reasons for wishing to sell (referred to below). The Respondent had also provided written documentation, principally copy emails illustrating her attempts to obtain new accommodation (so far unsuccessfully).
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh Council on 22 June 2023 was included in the application papers.

The Hearing

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 26 October 2023 at 14:30 (having agreed on 24 October 2023 to postpone the commencement of the CMD by 30 minutes in consideration of a significant personal event that the Respondent was attending in the morning of 26 October). We were addressed by the Applicant's agent, Raphael Bar, Head of Customer Relations, DJ Alexander and the Respondent herself. The Applicant was not in attendance.
7. At the CMD, the Applicant's agent confirmed that the application for eviction was insisted upon. The written statement provided shortly before the CMD provided the detail. In summary, the Applicant explained that she lived in a two-bedroom property but it was no longer suitable for her because:
 - a. Her mother now lived with her;
 - b. She now worked from home full-time, so was forced to work from her bedroom (as her mother was now in the other bedroom); and
 - c. She lacked the ability to host visiting family members, in particular her sister and her family who lived abroad but wished to visit more frequently for personal reasons.The Applicant saw the solution to her own housing issues was to sell the Property and, with her other funds, purchase a larger property for herself and her mother to live in together, with sufficient space for her to work from home and to host visitors. She wished to do so as soon as possible as:
 - d. House prices were increasing, which along with mortgage rates generally being higher, led her to wish to purchase as soon as possible;
 - e. She was conscious of the continued costs of being a landlord and insuring and maintaining two properties; and
 - f. Her mother required an adapted bathroom, and she could not afford to make the changes in her current property and then make them all over again when they moved.

8. The Respondent confirmed that she was looking to leave the Property but was concerned about being evicted before she had found new accommodation. She provided detail of her personal circumstances. She explained that her husband remained in Nigeria where he worked, and she had a permanent position in a care home in the Edinburgh area as a carer. She had recently completed a course in Scotland and was being sponsored to remain and work in the UK by her employer. She wished stability for her two children, who were 15 and 17 and both at the local high school, the eldest in their final year. She had first looked for accommodation local to the high school but was now looking further afield. To date she had not yet found anything despite many enquiries and viewings. A recent tenancy application for a private tenancy was accepted but the landlord then sought six-month's rent in advance which she was not able to afford. She continued to look for new accommodation and had further current leads to investigate. She confirmed that she had not yet sought any independent advice on matters, nor had consulted the local authority. The Respondent said that she and her children had long-since packed up ready to move, and were effectively living out of boxes at present in the expectation of finding new accommodation.
9. The Applicant acknowledged that as the application was subject to the 2022 Act, the earliest that the Applicant could advance any order for eviction was after the anticipated expiry of the 2022 Act on 31 March 2024. We explained this to the Respondent and sought clarification from her whether, in the circumstances of having a further five months to seek rehousing, she opposed the application. She said that she did not.
10. In regard to other relevant matters, we confirmed:
 - a. The Respondent's husband did not live with her, though came to visit. She was thus looking for a home in Edinburgh for herself and her children, as it was anticipated that her husband would remain in Nigeria and only continue to visit.
 - b. The Respondent and her family did not have any special needs and nor was the Property adapted for their use.
11. No motion was made for expenses.

Findings in Fact

12. On 24 March 2022, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 25 March 2022 ("the Tenancy").
13. On 9 March 2023, the Applicant's letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 4 June 2023.

15. A copy of the Notice to Leave was served on the Respondent by email, as per the provisions of the Tenancy Agreement, on 9 March 2023.
16. Clause 4 of the Tenancy Agreement provided for notices to be served “using the email addresses set out in” the Tenancy Agreement, which email address for the Respondent was used by the Applicant on 9 March 2023 when sending the Notice to Leave.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on or around 22 June 2023.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh Council on the Applicant’s behalf on 22 June 2023.
19. The Applicant formally instructed DJ Alexander to market the Property for sale on or about 6 June 2023.
20. The Applicant wishes to sell the Property with vacant possession in early course so as to utilise any equity as part of a plan to move to a larger property suitable for her future needs and those of her mother (who lives with her).
21. The Respondent is in full time employment and is seeking a right to continue to work in her current role in Edinburgh through appropriate immigration steps.
22. The Respondent resides with her two children at the Property. The children are 15 and 17 years old and both in full time education at the local high school.
23. The Respondent is making active attempts to obtain alternative accommodation and has been since at least early June 2023 but has thus far failed to obtain a new tenancy that is both affordable and suitable for her and her family.
24. On 20 September 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 26 October 2023 upon the Respondent.

Reasons for Decision

25. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
26. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...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,*

- (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.*

27. The formal agreement dated 6 June 2023 constitutes evidence under paragraph (3)(a). On the basis of the written submissions by the Applicant (on the Applicant's personal accommodation needs) we agreed that paragraphs (2)(a) and (b) were also satisfied.
28. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were reasonable.
29. There was no argument made by the Respondent against the reasonableness of eviction as, when discussed with her at the CMD, she did not oppose the order. In any event, though we noted the Respondent's difficulties in obtaining accommodation and desire not to disrupt her children's education by moving too far away from their school, in all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
30. We were not minded to grant any additional suspension of the order to evict (and none was requested). The Respondent will have a period of slightly over five months so as to obtain suitable alternative accommodation before being under threat of eviction.
31. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
 - a. the day following the end of a period of 6 months beginning the date of our order (that is 26 April 2024); or
 - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the *Cost of Living (Tenant Protection) (Scotland) Act 2022* (currently scheduled for 31 March 2024).

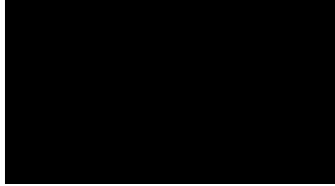
Decision

32. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland)*

Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 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.



26 October 2023

Legal Member/Chair

Date