



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”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2408

Re: Property at 116 Lauriston Place, Edinburgh, EH3 9HX (“the Property”)

Parties:

Miss Charlotte Elias, 21 Learmonth Terrace, Edinburgh, EH4 1PG (“the Applicant”)

Mr Percy Morgan, Aaron Phillip Gallagher, 116 Lauriston Place, Edinburgh, EH3 9HX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Williams (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 recovery of possession of the property be granted.

Background

1. By application received on 20 July 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery primarily in terms of Ground 5 of Schedule 3 to the 2016 Act (landlord’s family member intends to live in the property) but also in terms of Ground 12 (rent arrears over three consecutive months). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same and the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act

2003 and proof of service of same. Affidavits of the Applicant and her son were lodged in support of Ground 5 and, subsequently, a rent ledger account in respect of rent arrears in support of Ground 12.

2. Following initial procedure, on 7 September 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 7 December 2023 was served on both Respondents by way of Sheriff Officer on 30 October 2023. In terms of said notification, the Respondent was given until 17 November 2023 to lodge written representations. No representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 7 December 2023 at 2pm, attended by Ms Kelly Gibson of Ballantynes Letting Agents on behalf of the Applicant. The Tribunal delayed the commencement of the CMD for around 5 minutes to give the Respondent an opportunity to join late but they did not do so.
5. After introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the fact that it did not appear to be opposed by the Respondent. In respect of the eviction grounds, it was explained to Ms Gibson that, in terms of the legislation, the position is that the Tribunal cannot generally consider a ground for eviction if it is not included in the Notice to Leave, as here, given that although Ground 12 is included in the application, it was not included in the Notice to Leave, which only referred to Ground 5. Ms Gibson explained that the reason for this was that, although rent arrears were in existence when the Notice to Leave was served in April 2023, the rent account had not been in arrears for 3 consecutive months at that stage and, accordingly, was not included. The Legal Member explained that, in those circumstances, it was not possible for the Tribunal to exercise its discretion in terms of the legislation to allow the inclusion of Ground 12. It was agreed that the application would proceed to be considered only in terms of Ground 5.
6. Ms Gibson was asked to give the background to the application in terms of Ground 5 and also to address the issue of reasonableness, given that the Tribunal required to be satisfied not just that the ground is met, but also that it is reasonable in all the circumstances for the Tribunal to grant the eviction order sought. Ms Gibson referred to the Affidavits lodged from the Applicant and her son, Teo Elias, confirming that it was the intention that he would reside in the Property once possession was recovered. The Applicant’s son is currently living with the Applicant and has applied to Edinburgh University and wishes to reside in the Property for the duration of his university education, which would be well beyond the 3-month period stipulated in this eviction

ground. Ms Gibson had no further detail on this and did not know, for example, why the Applicant's son could not simply continue to reside with the Applicant, given that she has an Edinburgh address herself. It was agreed that Ms Gibson should be given the opportunity to seek instructions from the Applicant and the Tribunal adjourned briefly to allow her to do so. On reconvening, Ms Gibson explained that she had been unable to contact the Applicant as she is apparently in Trinidad but she had managed to contact the Applicant's solicitor who deals with the family's affairs. He had advised Ms Gibson that the Applicant's son is aged around 18 or 19 and is presently a first year student at Edinburgh University. However, the Applicant's father who lives in Trinidad, and whom she is currently visiting, is elderly and unwell and it is accordingly intended that the Applicant herself will be selling the family home in Edinburgh and moving back to Trinidad in the course of next year. The Applicant's son is going to be staying on in Edinburgh to complete his education and will require the Property to live in.

7. As to reasonableness, Ms Gibson advised that there are now rent arrears amounting to £13,530.32. There were no rent payments made since January 2023. The rent is £1,295 per calendar month. When they served Notice to Leave in April 2023, there were already substantial arrears. They have had only sporadic communication with the Respondent. It was mainly the second Respondent, Mr Gallagher, who dealt with the rent side of things and he told her he was making the rent payments from his savings. He is American and Ms Gibson says he has told her that he is now back living in America, following the Respondent's relationship breakdown. The first Respondent, Mr Morgan does not communicate at all and has been refusing to allow access to the Property. Ms Gibson explained that they are now on their third right of entry application through the Tribunal and that they are supposed to be getting entry on 14 December 2023. They need in to attend to the gas safety check and possibly other repairs. Ms Gibson is certain that Mr Morgan is still living at the Property and that he lives alone. As to the more recent payments into the rent account in July 2023 of just over £700, Ms Gibson explained that she had been in contact with the local authority to see about arranging Universal Credit housing payments being made directly to the Applicant. This is how these payments into the account came about. However, there were no further payments made as she was told that the Respondent is not eligible. She does not have any more detail regarding Mr Morgan's circumstances as they are not in communication. In summing up, Ms Gibson asked the Tribunal to grant the eviction order under Ground 5 today to allow the Property to be recovered for the Applicant's son to live in and to find it reasonable, given the circumstances of the second Respondent already having vacated, the substantial rent arrears and the lack of cooperation from the first Respondent regarding both the arrears and preventing access to the Property by the Applicant.
8. The Tribunal, having considered the application, confirmed that the eviction order would be granted. There was brief discussion regarding the process to follow and Ms Gibson was thanked for her attendance and for obtaining the further background information required by the Tribunal to assist in their deliberations.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 23 April 2021.
3. The second Respondent is still in occupation.
4. The Applicant's son intends to live in the Property as his only or principal home once vacant possession is obtained and to do so for at least three months.
5. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 21 April 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 18 July 2023. April 2023.
7. The Tribunal Application was submitted on 20 July 2023, after expiry of the notice period.
8. There are substantial rent arrears currently owing of in excess of £13,500.
9. The Respondent is not allowing the Applicant access to the Property for purposes of inspection/repair.
10. The Respondent does not oppose the application.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information given at the CMD on behalf of the Applicant by Ms Gibson.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction, namely Ground 5 which is as follows:-

“Family member intends to live in property

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7)Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.”

The Tribunal was satisfied in that all elements of Ground 5 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had regard to the terms of the Affidavits lodged from the Applicant and her son, confirming his intention to reside in the Property. The Tribunal was satisfied from the Affidavits and the additional information Ms Gibson had been able to obtain that there was good reason for the Applicant requiring possession of the Property back, due to the background family circumstances, in order that her son could reside in the Property whilst studying at Edinburgh University, which he has just started and which is likely to be for at least the next few years. As to reasonableness, the Tribunal considered that, apart from the above reason for the Applicant requiring possession, the facts that there were substantial rent arrears and that the Respondent was refusing the Applicant access to the Property for inspection and repair, added further weight to the reasonableness arguments put forward on behalf of the Applicant. It was clear that the Respondent was not engaging with the Applicant in relation to the tenancy.

4. The Respondent had not put in any representations in relation to this application, nor attended the CMD. The Tribunal accordingly had no information before it contradicting the evidence and other information put forward by the Applicant. In these circumstances, the Tribunal considered it reasonable to grant the eviction order and for it to be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N. Weir

Legal Member/Chair

7 December 2023
Date