



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/23/3239

Re: Property at 34/2 East Parkside, Edinburgh, EH16 5XN (“the Property”)

Parties:

Ms Evaine Ladwa, 7 Frenchs Forest Road, Seaforth, New South Wales, Australia, 2092, Australia (“the Applicant”)

Ms Sau Lan Wong, 34/2 East Parkside, Edinburgh, EH16 5XN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for an eviction order dated 30th August 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent and provided with her application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, various correspondence regarding the sale of the Property, and detailed information regarding her financial situation.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016* and the

Coronavirus (Scotland) Act 2020, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th February 2024, and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal dated 19th February 2024, the Respondent sought a postponement of the upcoming Case Management Discussion upon the basis that she would be in Hong Kong on a pre-booked trip.

By e-mail to the Tribunal dated 6th March 2024, the Applicant opposed the request to postpone. She did so upon the basis that she had been suffering financial hardship for an extended period of time and had a pressing need to sell the Property. She explained that with each passing day she was getting deeper into debt and was inundated with notices from her bank regarding missed payments. She noted that she lived in Australia and was dialling in to the Case Management Discussion and did not see why the Respondent could not also do so from Hong Kong.

The Tribunal responded to the Respondent by e-mail asking her whether she could dial in to the Case Management Discussion, and if she could not do so to explain why she could not do so.

By e-mail to the Tribunal dated 20th March 2024, the Respondent stated that she would be unable to attend the Case Management Discussion as she would be addressing various matters concerning her teenage child whilst in Hong Kong which required her "immediate and undivided attention" and that she required to ensure her child's needs were met. She provided no further details, did not explain why she would be unable to participate in a short telephone call, and did not explain why she could not arrange for a representative to participate on her behalf.

After careful consideration, the Tribunal refused the request to postpone. The Tribunal required to consider the overriding objective to deal with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Albeit the Tribunal wished the Respondent to be able to participate fully in the proceedings, a postponement would as a result of the Tribunal's future availability result in a delay of approximately four months. This would cause substantial delay in dealing with the application. That would have been particularly prejudicial to the Applicant where she sought an order due to ongoing and increasing financial pressure which she sought the order for the purpose of alleviating.

Balancing the parties' competing interests and having regard to the lack of a satisfactory explanation from the Respondent as to why she could not dial in or appoint a representative to do so and participate on her behalf, the Tribunal concluded that it would be unjust to postpone the Case Management Discussion in these circumstances.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 22nd March 2024 by Tele-Conference. The Applicant participated and was represented by Ms Whelan, letting agent. The Respondent did not participate, nor was she represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant and Ms Whelan invited the Tribunal to grant the order sought on ground 1A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Applicant explained that she required to sell the Property to alleviate financial hardship.

The Applicant explained that she had been made redundant and her employment and income had terminated in December 2023. She was hopeful that in due course her ongoing attempts to obtain new employment would be successful, but until then her monthly expenditure exceeded her monthly income by £907.00. She referred the Tribunal to the detailed information regarding her financial situation which she had provided in that regard.

Even after obtaining replacement employment, she would still require to sell the Property to repay the debt she had amassed up to that point. Additionally, her mortgage on the Property was interest only and was due to end in four years. She did not have and did not envisage she would have the money to repay the capital borrowed to purchase the flat, so she also needed to sell it for that reason.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) as amended by the *Coronavirus (Scotland) Act 2020*, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 1A of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship. The Tribunal may find that this ground applies if the landlord (1) is entitled to sell the let property, (2) is suffering financial hardship, and (3) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (4) the Tribunal is satisfied that it is reasonable to issue an eviction order.

The Tribunal was satisfied that ground 1A had been established. The landlord was entitled to sell the Property, was suffering financial hardship, intended to sell it to alleviate that hardship, and it was reasonable to grant the order sought.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

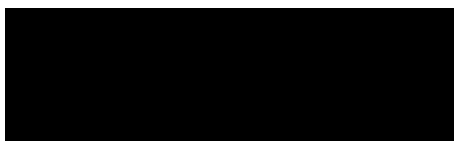
Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

Decision

In these circumstances, the Tribunal made an eviction order against the Respondent in this 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.



Legal Member/Chair

22nd March 2024

Date