

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/23/4028

Re: Property at 24/1 Firrhill Drive, Edinburgh, EH13 9ET ("the Property")

Parties:

Mr Neil Edgar, 9 Tenth Street, Newtonrange, EH22 4JF ("the Applicant")

Miss Charlotte Wales, 24/1 Firrhill Drive, Edinburgh, EH13 9ET ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 24 September 2024, the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

In particular by email dated 10 September 2024 the Respondent indicated she would not be attending the CMD "*due to work deadlines*".

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

Background

By virtue of a Decision of the tribunal dated 17 April 2024 ("the Decision") the tribunal granted an eviction order against the Respondent in favour of the Applicant in terms of Section 51 and Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").

By email dated 22 April 2024 the Respondent sought permission to appeal the Decision. She did so on the basis that that the Applicant failed to fully complete the Notice to Leave dated 11 April 2023 as he did not insert an appropriate date prior to which an application for an eviction order would not be raised at Part 4 thereof.

The tribunal, at its own instance, reviewed the Decision and, having done so, by determination dated 31 July 2024 set aside the Decision and required that a fresh CMD be scheduled. By determination of the same date the tribunal refused the Respondent's application for permission to appeal the Decision as being unnecessary and issued a Notice of Direction to the Respondent.

Notice of Direction

The Notice of Direction was issued to the parties by email dated 2 August 2024. In terms of the Notice of Direction the Respondent was required to provide:-

"The principal and complete Notice to Leave dated 11 April 2023 served by the Applicant on the Respondent. For the avoidance of doubt a copy or photograph of the Notice to Leave is not acceptable. The tribunal requires the production of the original Notice to Leave as served with the Applicant's "wet" signature thereon and any attachments thereto."

The documentation required to be lodged with the tribunal no later than 14 days prior to the next CMD, being the CMD subsequently assigned to take place on 24 September 2024.

The tribunal did not receive any response to the Notice of Direction from the Respondent within the period required.

By email dated 23 September 2024 the tribunal reminded to the Respondent that she had not complied with the Notice of Direction and sought the paperwork requested prior to the CMD on 24 September 2024.

By email dated 23 September 2024 the Respondent stated :-

" I had previously sent a photograph of document but I was unaware that you required the original. I suffer from agoraphobia and would not be able to deliver the document in person tomorrow. I have checked my inbox and there is no email dated 02/08.2024 please can you forward the original email to me that is dated 02.08.2024.."

The tribunal sent a further copy of the email of 2 August 2024 to the Respondent on 24 September 2024 prior to the CMD.

On each email sent by the tribunal to the Respondent, including that dated 2 August 2024, her email address was correctly stated.

The CMD

At the outset of the CMD the tribunal made the Applicant aware that the Respondent had intimated she would not be attending the CMD and that there had been no response to the Notice of Direction other than the Respondent indicating she had not received the tribunal's email of 2 August 2024.

The Applicant sought an eviction order be granted once again. He said:-

- i. The Respondent is still in occupation of the Property where she lives with their son.
- ii. The Respondent continues to pay rent and there are no arrears.
- iii. The Applicant recently served a Notice to increase the rent effective from September 2024 and the Respondent has paid the increased rent of £554.40 this month.
- iv. The Applicant's circumstances are otherwise generally the same as those indicated at the previous CMD on 16 April 2024 the only differences being that the prospect of redundancy is now more distant and the mortgage that the Applicant pays over the Property is now on a variable rate and is presently £550 per month.

Findings in Fact

The Tribunal makes the following findings in fact:-

- i. The Applicant leased the Property to the Respondent in terms of the PRT.
- ii. The PRT commenced on 2 August 2021.
- iii. The Property was let on an unfurnished basis.
- i. The rent payable in terms of the PRT was initially £480 per calendar month.
- ii. No deposit was paid.
- iii. The Applicant is not registered with City of Edinburgh Council as a landlord.
- iv. The Respondent is the Applicant's ex-partner who lives in the Property with their 21 year old son who is in employment.
- v. Rent payable in respect of the Property is up to date.
- vi. The Respondent voluntarily increased her rent to £495 per month with effect from 2 August 2023.
- vii. On 11 April 2023, the Applicant served on the Respondent by recorded delivery post a Notice to Leave requiring the Respondent remove from the Property by 11 October 2023 on the basis that the Applicant intends to sell the Property No supporting evidence was attached to the Notice to Leave.
- viii. The Applicant messaged the Respondent as 11 October 2023 approached asking what was happening. She indicated she had spoken to the homelessness unit at City of Edinburgh Council and had been advised not to move out without an eviction order being granted as to do so would render her intentionally homeless.
- ix. The Applicant enjoys a good relationship with his son who is looking to move to his own accommodation or to share with a friend. He may move with the Respondent in the short term or could stay with the Applicant and his partner for a short period.
- x. The Applicant previously stayed in the Property as his own home until June 2021. At that point he moved in with his current partner. The mortgage over the property is in the Applicant's name.
- xi. By letter dated 10 November 2023 the Applicant served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 which was posted by recorded delivery on 8 November 2023.
- xii. The Applicant will be 57 years of age this year.
- xiii. The Applicant is employed as a Project Development Manager with a housing association dealing with new builds.
- xiv. The Applicant is looking to retire within the next couple of years.
- xv. The Applicant lives with his partner in her property and wishes to realise his assets for his impending retirement.
- xvi. The Applicant has no intention of moving back to the Property and has no intention of renting the Property out again. He has never previously rented any properties and has no other rented properties.

- xvii. The Applicant's mortgage over the Property is currently payable at £550 per month. The mortgage is with Natwest bank and has 7 years left to run.
- xviii. The Property was purchased for £91,657 and the Applicant has since spent around £10,000 on improvements. He believes the property is worth around £120,000 to £130,000 on the open market. There is around £34,000 left on the mortgage to pay.
- xix. The Property consists of a ground floor flat with 2 bedrooms, a garden to the front and a shared garden to the back.
- xx. The Applicant recently served a Notice to increase the rent effective from September 2024 and the Respondent has paid the increased rent of £554.40 for September 2024.
- xxi. The Applicant is entitled to sell the Property.
- xxii. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondent and the parties' son ceasing to occupy it.
- xxiii. It is reasonable to issue an eviction order.

Reasons for Decision

The Respondent did not submit any further representations to the Tribunal and did not attend the CMD. She did not respond to the Notice of Direction which was sent to her correct email address on 2 August 2024. In the absence of the original Notice to Leave dated 11 April 2023 as served on the Respondent the tribunal could not be satisfied that the photographs sent to the tribunal by the Respondent with her application for permission to appeal were authentic.

The factual background narrated by the Applicant within the application papers and orally at the CMD was accepted by the Tribunal.

The application proceeds upon ground 1 of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(1) It is an eviction ground that 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."*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph

3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon an exchange of emails with Chris Weir of Shepherds Chartered Surveyors dated 17 October 2023 with regard to the preparation of a Home Report in respect of the Property and a price quotation for estate agency and conveyancing costs associated with a sale of the Property provided by McDougall McQueen and dated 19 October 2023. The Tribunal accepts these documents as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account:-

- i. That the Applicant is not and never has been a commercial landlord. The Property was previously his own home. The Applicant will never move back into the property nor has he any desire to rent it out again.
- ii. The Applicant is almost 57 years of age. He is contemplating retirement within the next 2 to 3 years. He wishes to make plans for that and realise assets. There is approximately £85,000 to £95,000 of equity in the Property.
- iii. The mortgage over the Property payable to Nat West has reached the end of its 3 year fixed period. Payments are now at a variable rate and currently at £550 per month.
- iv. The Respondent appears to have taken steps to secure local authority accommodation. The granting of an eviction order may assist her in being offered such accommodation.

There were no submissions from the Respondent relative to reasonableness and the Tribunal accepted the Applicant's stated position. In these circumstances it is reasonable to issue an eviction order.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.

Gillian Buchanan

Legal Member/Chair

24 September 2024
Date