



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

Chamber Ref: FTS/HPC/EV/23/0417

Re: Property at 4 Dryden Avenue, Loanhead, Edinburgh, EH20 9JT (“the Property”)

Parties:

Mr Wojciech Janus, Monika Janus, 120 Gilmerton Dykes Road, Edinburgh, EH17 8PE (“the Applicant”)

Mrs Anna Malgrab, 4 Dryden Avenue, Loanhead, Edinburgh, EH20 9JT (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant Mr Wojciech Janus was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 9 February 2023 the Applicant Mr Wojciech Janus applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a Notice to Leave and a Section 11 Notice in support of the application.
2. During the course of further correspondence with the Tribunal administration, Mrs Monika Janus was added as a joint Applicant.
3. By Notice of Acceptance dated 2 May 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 18 May 2023.

The Case Management Discussion

5. A CMD was held by teleconference on 20 June 2023. The Applicants attended in person as did the Respondent.
6. By way of a preliminary matter the Tribunal established that the tenancy agreement which had been lost had been between Mr Janus and the Respondent. Mrs Janus was not a party to the agreement and the Tribunal determined that whilst she could continue to represent her husband, she should not be a party to the application.
7. The Tribunal noted that the tenancy commenced on 7 February 2020 and the rent was £780.00 per calendar month. The Respondent confirmed that she had been served with a Notice to Leave by post and that it had given her until 7 February 2023 to remove from the property. She said that on the advice of the Edinburgh Council homeless unit she had remained in the property. She said she had been told she had to wait until the Tribunal granted an order for her eviction before she would be rehoused. She said she had been on the council waiting list for housing for three and a half years. She said she could not afford another private let. She said she lived in the property with her 17-year-old son who was attending college.
8. Mrs Janus explained that she and her husband and two teenage children aged 18 and 13 were currently living with her sister-in-law and her husband and two children aged 16 and 14 in a two-bedroom property which was overcrowded but they did not have anywhere else to go. She also said that her sister-in-law had recently had an operation which made things even more difficult.
9. The Respondent advised the Tribunal that she was not opposing the order being granted and had an appointment with the Homeless Unit in the afternoon following the CMD.
10. For the Applicant Mrs Janus asked that the order be granted and asked when the Applicant would be able to move into the property. The Tribunal referred her to the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Findings in Fact

11. The parties entered into a Private Residential tenancy that commenced on 7 February 2020.
12. The current rent is £780.00 per calendar month.
13. The Respondent was served with a Notice to Leave dated 10 September 2022 by post providing that she should vacate the property by 7 February 2023.

14. Edinburgh City Council were given notice of the current proceedings by virtue of a Section 11 Notice.
15. The Respondent has applied to be rehoused by Edinburgh City Council.
16. The Respondent lives in the property with her 17-year-old son.
17. The Applicant and his family intend to live in the property.
18. The Applicant and his family are currently living in overcrowded conditions in a two-bedroom property with his sister and her family.

Reasons for Decision

19. The Tribunal was satisfied from the information provided by both parties that they entered into a Private Residential tenancy on 7 February 2020 and that the current rent was £780.00 per calendar month.
20. The Tribunal was also satisfied that the Respondent had been properly served with a Notice to Leave under Ground 4 of Schedule 3 of the 2016 Act and that appropriate notice of the application had been given to the local authority.
21. The Tribunal therefore had to consider whether it would in the circumstances be reasonable to grant the order. In reaching its decision the Tribunal took account of the fact that the Respondent did not offer any opposition to the order being granted. Furthermore, it was apparent that the Applicant's current living conditions for himself and his family were very unsatisfactory with eight people living in a two-bedroom property. The Tribunal was therefore in no doubt that it was reasonable for the order to be granted.

Decision

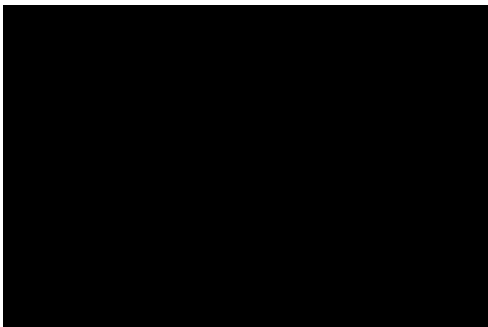
22. The Tribunal being satisfied that it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the 2016 Act.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

20 June 2023
Date