



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/22/2005

Re: Property at 5 West Fairbrae Drive, Edinburgh, EH11 3SY (“the Property”)

Parties:

Mr Andrew Scott Neil, 159/6 Slateford Road, Slateford, Edinburgh, EH14 1PB (“the Applicant”)

Ms Lynne Campbell, 5 West Fairbrae Drive, Edinburgh, EH11 3SY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was appropriate to grant an order for eviction in terms of S 51 of the Act on Ground 4 of Schedule 3 of the Act.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 22 June 2022 under Ground 4 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. cover email dated 22 June 2022
 - b. copy tenancy agreement between the parties over the property commencing on 6 January 2020.
 - c. Notice to leave dated 17 February 2022 and cover letter from letting agent Paul Rolfe Letting together with email sending same to Respondent by email on 17 February 2022 and Sheriff Officer service confirmation of the Notice to Leave on 21 February 2020.
 - d. S11 Notice with email of service on 22 June 2022
 - e. authorisation from Applicant for agent 26 May 2022

- f. email of Applicant to agent advising he requires to live in the property dated 17 February 2022
 - g. Affidavit of Applicant dated 18 October 2022
3. On 21 November 2022 the application and notification of the Case Management Discussion (CMD) was served personally by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 4. No representations from the Respondent were received by the Tribunal.
 5. The case documents are referred to for their terms and held to be incorporated herein.

B: Case Management Discussion

1. The Applicant attended the CMD with his letting agent representative Ms McLaughlin and his solicitor Mr Jaap. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD.
3. Mr Jaap moved for the order to be granted at the CMD.
4. Mr Neil advised that he had undergone a marriage breakup and divorce and requires the property to move in to have a permanent home. He is currently essentially without a home and staying on and off with another person and will have to move into his sisters accommodation temporarily until he can move into his own property. The property is his only asset where he holds full ownership and control. He last saw the Respondent on 17 July 2022 when he tried to talk to her about his situation and ensure access for gas safety checks and other matters. She had agreed by text to two further meetings, at which she then did not attend. Safety checks had to be chased up with the help of Mr Grant from Edinburgh City Council. He is a PRS Housing Officer who had tried to assist the Respondent. The Respondent seems to have two younger children and one child over 16 living with her. Mr Neil also explained that he is not aware of any issues of vulnerability of the Respondent. He reported he has problems getting a mortgage at his age and the only other asset he has is jointly owned with a business partner. The property is a 3 bedroom property and will be used by him and visits from his children. When he spoke to the Respondent in July 2022 she appeared to have no sympathy for his situation. She gave no reason why she would not be moving out.
5. Ms McLaughlin advised that before Mr Grant became involved another staff member of the Council had tried to find alternative accommodation for the Respondent, which the Respondent turned down. The staff member had reported that the Respondent had not engaged in correspondence and that this was the reason their involvement then ceased for a time. Ms McLaughlin also advised that whilst the wrong ground was referred to in the cover letter sent with the Notice to Leave on 17 February 2022, another cover letter to correct this had been sent immediately after the first email. The Notice to Leave also enclosed the email from the Landlord to the agent that he required to move into the property. The Respondent was fully aware of the reason for the notice. Ms McLaughlin stated the Respondent was not engaging in any discussions.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 6 January 2020.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicant has title and interest to pursue the application as the owner of the property.
5. The Applicant, his letting agent and the Council have tried to engage the Respondent in discussion about the situation and the Council has offered alternative accommodation.
6. The Respondents has largely been ignoring attempts to contact and speak to her.
7. She lives in the property with two young children and a child over 16.
8. The Applicant currently has no proper address. The family home was sold following the marriage breakup.
9. He will not be able to continue to stay with a third party at the start of 2023 and will have to move in temporarily with his sister.
10. The property is the only property in his sole ownership.
11. It has 3 bedrooms.
12. He intends to move into the property and live there and have it available for his children as well.
13. The notice to leave was served by email on the Respondent by the Applicant's representative on 17 February 2022 narrating the ground for the notice being ground 4 and providing the appropriate 3 months notice period.
14. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Landlord intends to live in property

4(1) It is an eviction ground that the landlord 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) the landlord intends to occupy the let property as the landlord'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) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings

in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged on behalf of the Applicant and the representations made by him, Ms McLaughlin and Mr Jaap at the CMD.

4. In terms of S 54 of the Act a 3 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 4 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence that the Applicant has a genuine need for housing after the family home was sold. His personal circumstances changed significantly after his divorce. He requires his property to live in and to have some accommodation when his children are with him. He is not living in a property as owner or tenant right now and is essentially staying with friends and family until he can move into his own property as his permanent home. He explained that buying another property to move into is not possible because he is unable to get a mortgage and the only other property he has a interest in is owned with a business partner and not a property he has control over.

6 The Respondent has not provided any information regarding the issue of reasonableness and her own situation. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific needs of the Respondents to live at the specific address have been raised. She has not provided any information advising of problems accessing suitable alternative accommodation and from the information provided by the letting agent it appears that the Council has already offered her alternative accommodation. The length of time of occupancy of the property has been considered by the Tribunal but is in and of itself not a reason to make an eviction order unreasonable.

7. 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 the present case the Applicant had provided evidence of his genuine need to move into the property as his permanent home. There have been repeated attempts on the part of the landlord and his agents to engage the tenant in efforts to discuss the situation. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 4 of schedule 3 of the Act.

14. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

15. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 20 January 2023.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 4 of Schedule 3 of the Act. The decision is unanimous.

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.

Petra Hennig-McFatrige

20 December 2022

Legal Member/Chair

Date