



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/22/3371

Re: Property at 10 Redhall Grove, Edinburgh, EH14 2DU (“the Property”)

Parties:

Mr Chris McFadden, 2 Kingsknowe Gardens, Edinburgh, EH14 2JF (“the Applicant”)

Miss Leigh-Anne Robb, 10 Redhall Grove, Edinburgh, EH14 2DU (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 10 Redhall Grove, Edinburgh, EH14 2DU under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 13 September 2022, the Applicant’s letting agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017 (“the Regulations”). The basis of the Application was that the Applicant required to repossess the Property to enable his son to live in the property under Ground 5 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 23 August 2021 between the parties and starting on 1 September 2021, an email from the Applicant dated 14 June 2022 to Direct Lettings, a Notice to Leave dated 15 June 2022 with email to the Respondent of the same date and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Edinburgh City Council dated 13 September 2022.
3. On 9 December 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 8 February 2023 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 14 March 2023. The Respondent required to lodge written submissions by 1 March 2023. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 9 February 2023 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 14 March 2023 by way of teleconference. Ms Virtue from Direct Lettings appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 23 August 2021 between the parties and starting on 1 September 2021, an email from the Applicant dated 14 June 2022 to Direct Lettings, a Notice to Leave dated 15 June 2022 with email to the Respondent of the same date and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Edinburgh City Council dated 13 September 2022. The Tribunal noted the terms of these documents.
7. Ms Virtue moved the Tribunal to grant an Order for repossession. She submitted that she had been contacted by the Applicant on 14 June 2022 to say he was looking for his son to move into the Property. She explained that the Applicant’s son had started studying in Edinburgh last September. She advised that there had not been much response from the Respondent to the Notice to Leave after she served it on 15 June 2022. Four Square had however been in contact with her. They had asked Ms Virtue for updates on

the position as they were helping her. The last contact from them was in January 2023.

8. Ms Virtue also submitted that the Respondent had also contacted the Applicant directly to say she could not afford to pay the full rent. On being questioned by the Tribunal she advised that the Property was a three bedroomed house. The Respondent's daughter had lived with the Respondent but had now left. The Respondent lived in the Property with her son who was of primary school age. Ms Virtue explained that there was a shortfall in rent which was paid through Universal Credit as the Respondent was only entitled to a two bedroomed property. Ms Virtue advised that she had no recent contact with the Respondent. She was not aware of any health or disability issues.

Findings in Fact

9. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 23 August 2021 between the parties and starting on 1 September 2021. In terms of Clause 4 parties agreed that all communication could be made by email.
10. The Applicant emailed Direct Lettings on 14 June 2022 to advise he wanted to repossess the Property to enable his son to move in. The Applicant's son is studying in Edinburgh. The intention of the Applicant is to move his son into the Property as soon as it is repossessed.
11. The Applicant's letting agent served a Notice to Leave on the Respondent by way of email 15 June 2022. The Notice to Leave required the Applicant to leave the Property by 10 September 2022. The Notice to Leave relied on Ground 5(Family member intends to live in property) of Schedule 3 to the 2016 Act.
12. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Edinburgh City Council on 13 September 2022.
13. The Respondent has sought support from Four Square. Four Square have been in contact with Direct Lettings, the Applicant's Letting Agent to be kept advised of the progress of the application.
14. The Respondent lives in the Property with her son who is of primary school age.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support.

16. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 5, namely that a family member intends to live in the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
17. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave setting out an eviction ground applied stated in the Notice to Leave accompanying the application.
18. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to allow his son to move into the Property at Part 2 of the Notice in terms of Ground 5 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2).
19. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondent by on 15 June 2022. The Tribunal is accordingly satisfied the Notice to Leave was validly served on 15 June 2022.
20. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 10 September 2022. The application was made on 13 September 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 84 days. Accordingly, the Notice to Leave complies with Section 62.
21. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely Ground 5.
22. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Virtue. The Tribunal considered the Respondent had not disputed the application. The Tribunal is satisfied on the basis of the documents lodged, together with submissions made by Ms Virtue, that the factual basis of the application had been established and was satisfied the Applicant intended to allow his son, who was studying in Edinburgh, to move into the Property as soon as he regained possession.

23. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal is satisfied that the Applicant's intention was to allow his son to move into the Property when he obtained possession. The Tribunal is satisfied on the basis of the submissions of Ms Virtue that the Respondent was taking advice from Four Square whom she had kept advised of progress of the application. The Tribunal considered that the Respondent had a son of primary age. However it appeared to the Tribunal that the Respondent was aware that she could not afford to remain in the Property after her daughter had left. Although the Tribunal were empathetic to predicament of the Respondent, the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

24. In the circumstances the Tribunal consider that in terms of Ground 5 of Schedule 3 it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

25. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

Shirley Evans

15 March 2023

Legal Chair

Date