



**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/23/1734**

**Re: Property at 84 Easter Drylaw Drive, Edinburgh, EH4 2RT (“the Property”)**

**Parties:**

**Mrs Linda Searle, 1 Northbank Cottages, Bathgate, EH47 4BX (“the Applicant”)**

**Ms Stacey Kirkpatrick, 84 Easter Drylaw Drive, Edinburgh, EH4 2RT (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber dated 25<sup>th</sup> May 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 24<sup>th</sup> August 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 5<sup>th</sup> October 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 14<sup>th</sup> September 2023.

3. On 25<sup>th</sup> August 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 25<sup>th</sup> August 2023.
4. On 13<sup>th</sup> September 2023, the Respondent's representative emailed the Housing and Property Chamber lodging a submission.
5. On 26<sup>th</sup> September 2023, the Applicant emailed a response to the Respondent's submission.

#### The Case Management Discussion

6. A CMD was held on 5<sup>th</sup> October 2023 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was not present but was represented by Ms Natasha McGourt, Housing and Money Adviser, Granton Information Centre.
7. The Applicant said that she now wishes to retire from being a landlord. She is not in good health. She is concerned that she cannot afford any repairs that may need to be done to the Property. She said that after the Respondent and her family being in the Property after a long time there will no doubt be the need for maintenance. In addition, there is a flat roof on the extension which the Applicant has concerns about needing attention in the near future. She said that she would not be able to undertake any repairs should it need it. The Applicant said that she has a variable mortgage which has meant that her mortgage had risen to £900 per month. She also has insurance of £56 per month. This means that she is losing money each month as the rent £950 does not cover her costs. The Applicant said that she owns four properties. In addition to this property she is selling her own residence later this month. She has two other properties which she rents to her son. She intends to move into one of those properties with her son. Her other son is disabled and requires the house to live in.
8. Ms McGourt said that the Respondent lives with her three children and partner in the Property. The Children are aged 11 and twins aged 13. The Respondent's youngest child is going through the process of assessment for autism. He is at a specialist unit within his primary school. The Respondent's partner works but the family is still in receipt of Universal Credit. The Respondents would not be in a position to buy the Property as suggested by the Applicant.
9. Ms McGourt said that she wished that the CMD be continued to allow the Applicant to investigate selling the Property with the Respondent as a sitting tenant. The Applicant said that she had taken legal advice from her solicitor on this point. She has been advised not to sell the Property with a sitting tenant. She will not be selling the Property with a sitting tenant on this advice. Ms McGourt said that given that the Applicant has investigated this point she did not consider any value to proceeding to a hearing. The Tribunal asked if she had any other reasons for proceeding to a hearing such as matters being in dispute or issues of reasonableness. Ms McGourt said that there were no other reasons for the case to proceed to a hearing.

10. Given that the Respondent's representative did not move to a hearing as she did not consider that there were issues in dispute or any issues of reasonableness not already raised within the written submission or at the CMD, the Tribunal considered it fair and proportionate to grant an order for eviction.

#### Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 6<sup>th</sup> August 2019.
12. The Applicant no longer wishes to be a landlord and wishes to retire. She has a significant health condition. The Applicant's cost for the Property have significantly increased to the point that they exceed the cost received by the rent.
13. The Respondent was served the Notice To Leave dated 1<sup>st</sup> September 2022.
14. The Respondent was waiting for the Applicant to investigate the possibility of selling the Property with the Respondent remaining as a sitting tenant when the Property was sold. She stopped looking for alternative accommodation in May 2023 in anticipation of the possibility of this happening.
15. The Applicant's solicitor has advised her not to sell the Property with a sitting tenant.
16. The Respondent has applied to her local authority for housing. She has been informed that she will receive priority for emergency housing once she is evicted from the Property.
17. The Respondent's Representative did not want to proceed to a hearing on any ground including a more extensive examination of reasonableness given the information that the Applicant has investigated selling the Property with a sitting tenant.
18. The Tribunal determined that it had sufficient information to consider reasonableness and that there were no issues in dispute.

#### Decision

19. The Tribunal, having considered the submissions of both parties with regard to reasonableness, determined that it would not be reasonable, in all the circumstances, to compel the Applicant to continue to be a landlord when it was to her detriment both financially and on grounds of health. The Tribunal found that ground 1 has been established and granted an order for eviction.

## 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.

# G Miller

5<sup>th</sup> October 2023

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Legal Member/Chair

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Date