

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/0104

Re: Property at 45 Stoneyhill Place, Musselburgh, EH21 6TN (“the Property”)

Parties:

Mr Marc Easton 39 Masons Way, Edinburgh, EH21 8BF (“**the Applicant**”) per his agents, LinnMac Property Ltd 7 Tarvit Street, Edinburgh, EH3 9LB (“**the Applicant’s Agents**”)

Ms Kelsey Duffy residing at the Property and Mr Connor Garvey residing formerly at the Property and now at 8/1 Piershill Place, Edinburgh, EH8 7EH (“**the Respondents**”)

Tribunal Members:

Karen Moore (Legal Member) and Carol Jones (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received 11 January 2023 and 13 March 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of the Act that the Applicant intends to sell the Property within three months of it becoming vacant. The Application comprised a copy of private residential tenancy agreement between the Parties, copy correspondence between the Applicant and an estate agent regarding the sale of the Property, copy Notice to Leave in terms of Ground 1 of Schedule 3 to the Act dated 11 October 2022 together with proof of service and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 2 June 2023 at 14.00 by telephone conference.
3. Prior to the CMD, the first-named Respondent submitted a letter with medical evidence. She advised that she did not oppose the Application. She explained that she is pregnant with a due date of 27 July 2023 and required time to remove from the Property.

CMD

4. The CMD took place on 2 June 2023 at 14.00 by telephone conference. The Applicant did not take part and was represented by Mr. M. Linn of the Applicant's Agents. The Respondents were both present and were not represented. The Respondent did not submit written representations.
5. Mr. Linn confirmed that the Applicant intends to sell the Property as the Respondents fell into rent arrears over a year ago and have not been paying the rent regularly since. He explained that the Applicant cannot afford to continue to let the Property and so has decided to sell. The selling agents have advised that the Property is not likely to be sold with sitting tenants who are in rent arrears and so vacant possession is required. Mr. Linn confirmed that the Applicant has no other properties and is not a commercial landlord with a portfolio.
6. The first-named Respondent, Ms. Duffy confirmed that she did not oppose the Application. She explained that since, the second-named Respondent, Mr. Garvey vacated the Property she cannot afford the rent by herself and cannot afford to repay the rent arrears. She explained that she will shortly be working reduced hours before going on maternity leave. She stated that she is not in receipt of state benefits. Mr Garvey confirmed that he did not oppose the Application, having vacated the Property over a year ago. With regard to finding alternative accommodation, Ms. Duffy advised that she has approached the local authority but cannot be considered for housing because of the level of rent arrears but will be considered if evicted from the Property.
7. The Tribunal adjourned briefly to consider the information before it.

Issue for the Tribunal

8. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision on both the statutory ground and reasonableness and so proceeded to determine the Application.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Parties;

- ii) The Respondents have accrued rent arrears which they are unable to repay;
- iii) The effect of the loss of rent has prompted the Applicant to decide to sell the Property;
- iv) The Applicant intends to sell the Property when he has vacant possession;
- v) The Applicant has carried out the statutory processes required by the Act.

Decision and Reasons for Decision

10. The Tribunal had regard to all the information before it and to its Findings in Fact and found that the statutory ground is established.

11. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the fact that the Respondents are not able to meet their financial commitments in terms of the tenancy agreement and that the Applicant cannot afford to bear the ongoing cost of lack of rental and so formed the view that continuing the tenancy is not tenable for either party. The Tribunal had regard to the first-named Respondent's position in respect of her pregnancy and took the view that homeless legislation provides her and her child with a sufficient safety net in respect of securing accommodation. The Tribunal also noted that neither Respondent opposes the Application. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Karen Moore

_____ **2 June 2023**
Legal Member/Chair **Date**