

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/23/3269

Re: Property at 55a Glenalmond Court, Whitburn, EH47 8PD (“the Property”)

Parties:

Mr Craig Daly, Hatton Grange, Dunkeld, PH8 0ET (“the Applicant”)

Ms Carole Campbell, 55a Glenalmond Court, Whitburn, EH47 8PD (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it could decide the application without a Hearing and that it was reasonable to issue an Eviction Order against the Respondent

Background

1. By application dated 18 September 2023, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2026. The Ground relied on was Ground 1 of Schedule 3 to the Act, namely that the landlord intends to sell the Property.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 1 June 2020, a Notice to Leave dated 15 May 2023 advising the Respondent that an application to the Tribunal under Ground 1 would not be made before 10 August 2023, a letter from a mortgage lender confirming the monthly repayment figure as £1,179.57 from 1 June 2023, and an email of 3 November 2023 from the Applicant to Rent Locally, instructing them to sell the Property and to instruct a Home report, with an email from them to the Tribunal of the same date, stating that the Applicant had originally instructed them by telephone, but the Respondent was not

responding or engaging with them for access to the Property for a Home Report.

3. On 11 January 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 1 February 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 28 February 2024. The Applicant was represented by Mrs Laurie Fell of Rent Locally, Bathgate. The Respondent was not present or represented.
5. Mrs Fell told the Tribunal that the Applicant wished to sell due to the financial hardship caused by his monthly mortgage payments having risen to £1,345 from 1 October 2023, with the rent being £875 per month. She confirmed that he had owned 14 rental properties and had sold one, but was intending to sell four of them. She provided a rent statement showing that the Respondent has not paid rent since August 2023 and emails between 22 August 2023 and 21 November 2023 from Rent Locally to the Respondent, each offering viewings of alternative properties that they had available for rent, including a 3 bedroom property nearby. She told the Tribunal that the Respondent had failed to book or attend any viewings. Mrs Fell understood that, so far as she is aware, the Respondent is in employment.
6. In one of the emails to the letting agents, the Respondent indicated that there were 3 adults living in the Property.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
8. Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

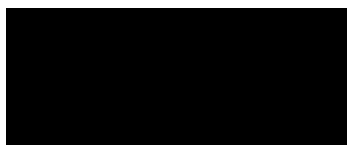
9. The Tribunal was satisfied from the evidence provided by the letting agents that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
10. The Tribunal noted in particular that the current mortgage payments exceed the monthly rent by £470 and that the Respondent has paid no rent at all since August 2023, resulting in arrears in excess of £5,000. No evidence had been provided by the Respondent as to her personal circumstances that she would wish the Tribunal to consider. It appeared from an email that there were 3 adults living in the Property, but the Tenancy Agreement is with the Respondent alone and there was no indication that they were dependants or that the Respondent or other occupants had any vulnerabilities. The Tribunal also noted that the Applicant's letting agents had gone to some lengths to offer the Respondent opportunities to view seven alternative properties, but that she had not taken up any of those offers.
11. Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order.
12. The Tribunal's Decision is affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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

28 February 2024
Date