



**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/23/4269**

**Re: Property at 61 Wallace Mill Gardens, Mid Calder, West Lothian, EH53 0BG (“the Property”)**

**Parties:**

**Miss Victoria Pollard, 32 Clyde Grove, Crossford, Carluke, ML8 5WN (“the Applicant”)**

**Miss Christina O'Lone, 61 Wallace Mill Gardens, Mid Calder, West Lothian, EH53 0BG (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1a of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -

- a. the tenancy agreement,
  - b. the notice to leave with evidence of service.
  - c. section 11 Notice with evidence of service
  - d. emails from an estate agent regarding the applicant's intention to sell
  - e. court documents regarding planning issues affecting the applicant and her home
  - f. emails regarding indicative costs for paying the adoption of a road at the applicant's home
  - g. evidence of planning permission regarding the building of a road at the applicant's home
3. The applicant and respondent both appeared at the case management discussion on 27 February 2024.

### Discussion

4. The applicant advised that she was seeking an order for recovery of the possession of the property under ground 1a (intention to sell due to financial hardship). The applicant wanted the property back, in order that it could be sold, and the proceeds of sale could be put towards the payment of certain works at her home: including the building of a road outside her home to adoptable standard by the local council; electricity works; and to make payment to take title to the common parts of her estate. The works were required to be done for her to obtain a completion certificate for her home.
5. She advised that she and her partner had built their own home. When she had bought the land, she had not been aware that the house would be part of a larger group of houses, and that they would have to have a development road built to an adoptable standard. Since then there was also the electricity cable works to be completed and the payment towards obtaining ownership of the common parts of the development. She advised that the sums involved to do the works and pay for the common parts would be in the region of £60-70,000. She had lodged an email from her neighbour with a note of an estimate for the road works, which amounted to over £50,000. She advised that she was due to make the same contribution. She advised that she therefore required to sell the property to use the sale proceeds towards paying for these works.
6. She advised that she had one other rental property and it was also being sold with the proceeds from that also going towards paying for the works.

7. She advised that she did work, but had no ability to pay for these works other than by selling her two rental properties. She advised that at present she could not re-mortgage the house that she had built, and she could also not sell it, because there was no completion certificate for the house. She advised that there had been no road bond obtained when the development work commenced and therefore the owners in the estate will have to meet the road construction costs. Given these factors, she had no choice but to seek an order for eviction to sell the property.
8. In addition, in terms of why it would be reasonable to grant the order, she advised that the tenant had started defaulting on her rent payments ever since she had been served with a notice to leave.
9. The respondent advised that she was opposed to the order being granted. She advised that had received the paperwork from the applicant about the road constructions works, but she could not confirm if these matters were true, she did not know.
10. She wished to continue living in the property. She lived in it with her daughter who is 14 and in her third year at secondary school. She considered that this was an important year for her daughter. She said that her daughter is very settled at her school. She will not move her from her school, even if it means she has to transport her there, if the order is granted. She said that ideally, she would want to stay in the school catchment area.
11. She advised that she had spoken to Shelter about the application. She had not sought legal advice. She advised that she did not want to move as she was very settled in her home.
12. She had nowhere else to go. She had contacted the council and other housing associations and placed herself on the housing waiting lists, she had not been offered anything. She understood that she may have to accept homeless accommodation if the order is granted. This was a worry for her.
13. She advised that she had some rent arrears, which had been caused by her mother falling ill. Her mother lived in Skye, and she had to take time off work to travel to see her mother and this had proved expensive. She had then fallen ill, and she had been unable to work and had been receiving statutory sickness pay. She is an agency worker and so, if she is not working, she is not receiving any wages. She advised that she had suffered from stress due to the eviction proceedings and she said she had felt harassed by the landlord and estate agent, as the estate agent contacted her the day after the notice to leave had been sent to her.
14. The applicant confirmed that the rent arrears were currently £3,155. The last payment she had received was the end of December 2023, there had been no payment in

January and February 2024. The respondent had also stopped contacting the landlord about the arrears.

15. The respondent advised that over the last few months, she has had periods when she has only been working part-time. She is now back to full-time work and will be able to pay her rent. She advised that she had applied for universal credit and had gotten one payment which she had sent to the landlord. She had also contacted the council for help, but none had been forthcoming.

### Findings in Fact

16. The Tribunal found the following facts established: -
17. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 18 October 2019.
18. The tenant was Christina O'Lone.
19. The landlord was Victoria Pollard.
20. The property was 61 Wallace Mill Gardens, Mid Calder, Livingston.
21. There was submitted a notice to leave dated 30 August 2023, stating that an application would not be made until 27 November 2023. It sought eviction under ground 1a - your landlord intends to sell the let property due to financial hardship.
22. The notice to leave had been emailed to the tenant. There was evidence of service.
23. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property.
24. There was a copy of an email sent 19 October 2023 from estate agents to the applicant confirming the value of the property and discussing the intention to sell.
25. The title deeds for the property show that the landlord is the owner of the property.
26. The landlord provided information to show that her current home is subject to the requirement that an adoptable road needs to be built; that work will also need to be done to install electric cables. There was evidence of an email about the costs of building the road for the next-door neighbour which amounted to around £50,000. There was a plan of the development lodged showing the road to be built and servicing a number of houses.
27. The applicant needed to sell the property to provide funds which will be used to contribute to the building works to the road and other works at her home. The applicant is selling her other rental property to obtain funds to use towards the road building and other works.

28. That the respondent resides in the property with her daughter who is 14 years old. That her daughter attends the local school and is settled at the school.
29. The respondent and her daughter are settled in the property.
30. The respondent has applied to the local council and local housing associations seeking social housing.
31. That the respondent's mother resides in Skye and she does not have other family who stay close by.
32. There are currently £3,155 of rent arrears. These arrears accrued after the notice to leave had been served.
33. The respondent is an agency worker and had some periods off her work since the notice to leave had been served.

#### Reasons for Decision

34. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
35. The ground which the Applicant seeks eviction under is ground 1a. It is in the following terms: -

#### **1A Landlord intends to sell property to alleviate financial hardship.**

(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if— (a) the landlord—

(i) is entitled to sell the let property,

(ii) is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(iii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(e) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market, and

(f) an affidavit stating that the landlord has that intention.

36. The applicant appeared. The respondent appeared. The title deeds show that the applicant is entitled to sell the property. The applicant confirmed that she needs to sell the property to raise money to pay costs of around £60,00-£70,000 towards the construction of an adoptable road and for other works related to her current home. She advised that she has no other means to pay for the building works. She is selling her other rented property. She is unable to mortgage her home or sell it as she does not have a completion certificate. When the order is granted she will proceed to sell the house. We find that the application meets the tests set out in subsection (2) (a) of the ground of recovery. It appeared that the terms of ground 1a were met.

37. The tribunal was then required to consider if it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction, but we have also decided it would be appropriate to delay enforcing the order until the end of May 2024 to allow the respondent's daughter to finish her school year.

38. In deciding to grant the order we placed most weight on the fact the applicant has to find upwards of £70,000 to pay for essential works to the development that she is living in. She had built her own house, but there had been problems with the lack of a road bond and the requirement to bring the road through the development to an adoptable standard. She had provided sufficient documentary evidence which showed that these works would have to be carried out. We consider that this would be a substantial amount of money to find. We agree that she would need to carry out these works in order to obtain a completion certificate for her house, and without one, we accept that

she could neither sell it or remortgage it. We accept that this would cause the applicant financial hardship. We also place weight on the fact that she is selling her other rental property. We find that these are compelling reasons to grant the order.

39. We also place some weight on the fact that there are rent arrears, although we note the respondent explained that the arrears arose due to family ill health, her own ill-health and the fact she is an agency worker; we note however that she had been in the property for a number of years apparently without any issue and it was only after the notice to leave had been served that rent payments had been missed. We also place some weight on the fact that the respondent had stopped engaging with the applicant about the rent arrears.
40. Against the order being granted, we placed some weight on the respondent having a child at high school who was settled there, and moving during the school year would be disruptive to her. We also placed some weight on the fact that the respondent looked for other accommodation, but she had not been able to secure any yet. We also place some weight on the fact that the respondent's family do not live close by, and she therefore has limited support. However, while we place weight on these matters as reasons not to grant the order, we consider that the financial situation that the applicant finds herself in is more compelling and it requires to be addressed. To address it will be costly, and she will need to sell her rental properties to address it. We considered this the weighty factor in deciding that the order should be granted.
41. Finally, while we are prepared to grant the order for eviction, we consider third year at secondary school is an important year for the child, and she is fairly well through that year now. We consider that it would be appropriate to extend the period before the order can be implemented in order that the child can complete the school year. This may also provide the respondent some time to find other accommodation.
42. Having regard to the matters set out above, the tribunal was prepared to grant the order for recovery of possession.

### Decision

43. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1a of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.

**MB**

**27<sup>th</sup> February 2024**

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**Legal Member/Chair**

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**Date**