



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/23/2536**

**Re: 42B Main Street, Prestwick, KA9 1NX ("the Property")**

**Parties:**

**Steven Smart residing at 43 Caerlaverock Avenue, Prestwick, KA9 1HS ("the Applicant")**

**Kirsten Davidson residing at 42B Main Street, Prestwick, KA9 1NX ("the Respondent")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) Ahsan Khan (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.**

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 17<sup>th</sup> July 2023. The application stated that the ground for eviction is as follows:

The Tenant was served three months notice to leave on the basis that the Landlord intends to sell, however the tenant was due out on 28<sup>th</sup> June 2023 but to date she has refused to leave. Ground One.'

### 1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 17<sup>th</sup> and 18<sup>th</sup> February 2021. The commencement date of the tenancy was 15<sup>th</sup> July 2020..
- Notice to Leave dated 28<sup>th</sup> March 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 28<sup>th</sup> June 2023 and the ground of eviction is that the Landlord intends to sell the Property.
- Certificate of Service by David Orr, Sheriff Officer dated 30<sup>th</sup> March 2023 confirming that Notice to Leave was served on the Respondent on 30<sup>th</sup> March 2023.
- A letter from Lomond Estate Agents dated 28<sup>th</sup> August 2023 to Mr S Smart confirming the estimated value of the Property and the fees for marketing the Property.
- Section 11 Notice.
- Email to Housing Options Team at South Ayrshire Council dated 28<sup>th</sup> August 2023 sending a copy of the section 11 notice.

## 2. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 19<sup>th</sup> January 2024.

The Applicant attended the CMD.

The Respondent did not attend the CMD.

2.1 The Respondent did not attend and was not represented. She had been notified of the CMD by Chelsea Murray, Sheriff Officer on 24<sup>th</sup> November 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

2.2 Mr Smart explained that his circumstances have changed since he purchased the Property as he is now retired but does not receive any pension and his income is consequently reduced. He has an interest only mortgage over the Property and he needs to sell the Property as he has insufficient income to meet the costs involved with the Property. He has no option but to sell the Property. He has kept Lomond Estate Agents advised as to the position regarding his proposed sale of the Property and once the eviction order is issued he will be in a position to start the process involved in selling the Property. At the start of the lease the Property was in a first class condition. However, the condition of the Property has deteriorated during this tenancy and it will take a number of weeks to bring the Property up to standard so it can be put on the market. He wants to market the Property as soon as he can. He confirmed that the rent payments are up to date. The rent has recently been paid by the Respondent's mother who is guarantor under the lease. He confirmed that he owns other rental properties and intends to sell one a year over the next few years. He selected this Property first as it is the lowest value and has the highest mortgage. He considered it reasonable for the eviction to be granted as the Tenant has not maintained the Property in a good condition. For example, a leak occurred under the sink and she had placed a bucket to catch the drips but did not empty the bucket with the result that it overflowed and caused water damage. He inspected the Property about a year ago and was concerned about the condition of the Property. He asked

the Respondent to put the Property into a good condition but when he reinspected the Property four months later it was in a worse condition.

### **2.3 Decision following the Case Management Discussion.**

The Tribunal found that the Ground One in Schedule 3 of the 2016 Act was met and granted order for possession of the Property.

### **3. Recall Application.**

The Respondent's Representative, Mr Tierney of Ayr Housing Aid Centre, sent the Tribunal administration an email dated 11th March 2024 requesting a recall of the eviction order. The Tribunal granted the Respondent's recall application in terms of their decision dated 27<sup>th</sup> March 2024.

### **4. Written Representations.**

#### **4.1 Written Representations from the Respondent dated 4<sup>th</sup> April 2024**

*'This Application for an eviction order was made to the Tribunal by the Applicant dated 17th July 2023 on the grounds that he wished to sell the property. Although no specific written explanation for the need to sell is included in Form E or any paper apart, the Applicant makes reference to significant financial hardship. This application was submitted, and initially decided in the respondent's absence, during the operation of the Cost of Living (Tenant Protection) (Scotland) Act 2022. The rent for the property is up to date and paid by the Respondent's parents. The Applicant is understood to have significant experience of property letting and sales. He was formerly closely involved in the operation of a multi branch firm of Estate Agents. He has owned and let property in England. The Applicant is called upon to produce detailed documentary evidence in relation to his financial difficulties and to confirm how many other properties, in Scotland or otherwise, he currently rents out and if any of them have also being placed for sale.*

*The Respondent has struggled with her mental health for many years. She has been diagnosed with ADHD, Borderline Personality Disorder and chronic depression. She is in receipt of significant medication, copy list produced herewith. She has been receiving ongoing psychiatric treatment for some time, copy letter regards a recent appointment also produced herewith. At an appointment on 22nd March with her consultant psychiatrist, the Respondent was accompanied by her sister, who took notes. The respondent is awaiting further referral and treatment. Although a request was made with the Respondent's GP surgery for an indication of the up to date position, this isn't yet available. A copy of the notes taken by the Respondent's sister, who is a trainee health professional, about planned further treatment are produced herewith. It is submitted that the Respondent is vulnerable on an ongoing basis. It is further submitted that the applicant has been unsympathetic towards the Respondent in relation to her mental health issues and, during an inspection of the property in 2022 or thereby, made remarks of a personal and offensive nature to the Respondent in relation to her treatment for her mental health problems including expressing a view that she ought to be 'locked up'. The Respondent sent a message to the Letting Agent then assisting the applicant, who similarly expressed a lack of sympathy or a constructive and supportive attitude to resolving issues. Copy exchange of messages*

*produced herewith. Shortly after the inspection and subsequent exchange of messages the Applicant arranged for a Notice to Leave to be served on the Respondent on 7th February 2022. Around that time the applicant and his Letting Agents began to communicate directly with the Respondent's parents. Remarks made since then by the applicant to various parties could reasonably be construed to mean that he was of the view that, had he been aware of the nature of the Respondent's mental health issues initially, he would not have let the property to her. This is respectfully suggested to demonstrate or be indicative of a discriminatory attitude of the applicant towards the Respondent on the grounds of her disability contrary to sections 6(1) and 13(1) of the Equality Act 2010.*

*Having been made aware by the Applicant's letting agents of issues arising from the Respondent's management of the tenancy, referred to above, her parents have assisted in trying to have matters resolved as and when they arise. For example, all rent payments are made by them to the applicant. The Respondent's parents liaised regularly in a helpful way with the Applicant and his letting agents until July 2023 when he seems to have ceased contact having submitted this application. The Respondent's parents remain committed to assisting wherever they can. For example, at the applicant's request, they facilitated a gas safety inspection recently, which disclosed that the gas supply had been disconnected. The 3 Respondent's parents are making urgent enquiries with the supplier about what balance is outstanding and how to arrange re-connection.*

*The Respondent has made a homeless presentation to South Ayrshire Council and has been accepted. She awaits an offer. An APOS statement has been requested but at time of writing is not yet available. The Respondent undertakes to forward same when received.*

*For all of the above reasons it is respectfully submitted that it would be unreasonable to grant an eviction order as sought by the applicant. Esto the Tribunal may be minded to make an eviction order it ought to be suspended in terms of enforcement for such period as the Tribunal sees fit in all the above circumstances.'*

#### **4.2 Written Representations from the Applicant dated 5<sup>th</sup> April 2024**

*'In answer to point 1 I am currently overdrawn on both my RBS and Starling bank accounts & happy to provide evidence. I do have 3 other rentals all with interest only mortgages which with the increased rates now barely cover the cost let alone provide me with some income as was the original plan. I have never owned property in England. My intention is to sell one per year until my state pension in 3 years time. I have never made claim to any rent arrears*

*Point 2 This seems to be a statement and I can see no relevance to my need to sell my property.*

*Point 3 I totally dispute my lack of sympathy towards the tenant and had it not been for my concern that the tenant was ignoring the eviction order her parents would probably still be unaware of the circumstances & the eviction would have went ahead, however for fear that this might happen I contacted the tenants mother to make her aware of the pending eviction & advised her to assist in securing an alternative rental as we would not wish to see anyone homeless. I have a witness in the form of the plumber who accompanied me at the inspection who can confirm that I was upset & angry at seeing my lovely property in such a neglected and damaged state, I made the tenant aware that I have a nephew with mental health issues & that I was familiar with the condition, I never for one minute expressed that she should be "locked up"*

*and my witness Mr Alec Dougan will swear to this. As to the comment had I been aware of her mental state I would not have rented to her mental state was not the reason, the inclusion of the statement (which never happened) was the suggestion that we were supposedly told she could not guarantee to “maintain the property “ nor guarantee she “would allow access by agent” for inspection nor guarantee she would “allow access for legally required gas checks” and I as anyone to swear that had this information been given would you/ they rent under those circumstances? However, this is total fiction & did not happen. As you state I am very experienced in the field and would have stated that under the terms of the lease we would not be able to offer the tenancy which was not based on mental health but the terms of the contract. Over the years I have managed properties to many people with health issues & have always been supportive and take offence to the suggestion otherwise. And up until recently her mother was sympathetic to the predicament we found ourselves in & these allegations have only arisen since the eviction was granted.*

*Point 4 I concur that the rent is paid by the parents. The gas safety was always an issue for the safety of the tenant & other nearby residents & businesses. After being granted access we paid an engineer to attend at an agreed time only to discover that the gas supply had been shut down & therefore no inspection could be performed. The fact that further neglect of the property through lack of heating is a further concern.*

*As my circumstances seem to be open to examination ie number of properties, bank balance etc I would ask that given the proximity of the parents house why this is not considered an option to satisfy all parties?*

*Point 5 South Ayrshire council were served the required documents at the request of the tribunal & therefore must assist in providing accommodation.*

*Point 6 The tenant and her parents have been aware of the situation for almost a year, the initial 3 months notice was served and her mother even contacted me to apologise that it had been ignored. I then took all legal steps and was finally granted the eviction under the need to sell & can confirm that this is still the case. I am willing to disclose evidence of debt and lack of income to the tribunal although I do not feel that this should be relevant as the owner of the property it should be mine to do with as I please but if it speeds things up at the suggestion however disguised that we have so many properties we must be well off this is simply not true. I end by stating that this is my response to rather a sad situation when ultimately I get my property back I will have to find the cash to restore the property back to its original condition no doubt by incurring further debt which only the small equity will hopefully pay off once sold.*

*I feel that stalling tactics are in place & that despite the fact there is no need for the tenant to be homeless I am being punished for doing things by the book I will have nothing further to add during Mondays call so please refer to my reply as full and final Let's hope that common sense prevails & that the property can be returned to me without further delay.'*

## **5. Evidential Hearing 8<sup>th</sup> April 2024.**

This case called for an evidential hearing at 10.00 on 8<sup>th</sup> April 2024.

The Applicant attended the hearing.

The Respondent attended the hearing together with her Representative Mr Tierney. The Respondent's parents Mr and Mrs Davidson also attended, as supporters.

**5.1** Both Mr Tierney and Mr Smart made oral representations to the Tribunal. After a short adjournment Mr Smart advised the Tribunal that he would be agreeable to the eviction order being suspended to 1<sup>st</sup> June 2024. Mr Tierney confirmed that the Respondent accepted this offer from Mr Smart.

## **6. Decision**

### **6.1 The Tribunal made the following findings in fact:**

6.1.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 15th July 2020.

6.1.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

6.1.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate AYR97788. Section B of the Land Certificate confirmed that the Applicant is heritable proprietor of the Property. He is entitled to sell the Property.

6.1.4 The Notice to Leave was served on the Respondent by Sheriff Officer on 29<sup>th</sup> March 2023 and advised the Respondent that an application would not be made to the Tribunal before 28<sup>th</sup> June 2023.

6.1.5 The Notice to Leave advised the Respondent that the Applicant intended to sell the Property.

6.1.6 The section 11 notice was sent to South Ayrshire Council by email on 28<sup>th</sup> August 2023.

6.1.7 The Applicant intends to put the Property up for sale within three months of the Respondent ceasing to occupy the Property.

### **6.2 Requirements of Section 109 of the Procedure Rules.**

**6.2.1** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application that is being relied on by the Applicant is the ground that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

**6.2.2** The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The letter from Lomond Estate Agents in respect of the sale of 42B Main Street, Prestwick, KA9 1NX dated 28<sup>th</sup> August 2023 together with the Landlord's oral representations were sufficient in their terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 28<sup>th</sup> March 2023 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 28<sup>th</sup> June 2023.

The Tenancy commenced on 15<sup>th</sup> July 2020. As at 28<sup>th</sup> March 2023 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months. The application for eviction was based on Ground 1 of Schedule 1 of the 2016 Act and therefore eighty four days notice was required.

The Landlord served the Notice to Leave on the Tenant on 30<sup>th</sup> March 2023 and correctly gave the Tenant a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

A copy of the section 11 notice had been provided.

**6.2.3** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 109(c) of the Procedure Rules.

**6.2.4** The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 as the documents and evidence detailed at paragraph 6.2.2 (i) hereof are sufficient evidence that the Applicant intends to sell the Property.

**6.2.5** The Tribunal considered the parties representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

*'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'*

**6.2.6** The Tribunal weighed the respective positions of the parties. They found that it was reasonable for the eviction order to be granted due to the agreement reached by the parties.

**6.2.7** Accordingly, the Tribunal found in law that the Ground One in Schedule 3 of the 2016 Act was met. They determined that the order for possession of the Property be granted as Ground 1 of Schedule 3 of the 2016 Act had been met.

## **7. 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.**



**8<sup>th</sup> April 2024**

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**Legal Member**