



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Scotland (“Act”) 2016**

**Chamber Ref: FTS/HPC/EV/22/4094**

**Re: Property at 47 Eastfield Road, Dumfries, DG1 2EJ (“the Property”)**

**Parties:**

**Mr Jeremy Lindsey and Mrs Marie Lindsey-O’Neill (“the Applicants”)**

**Mr Neal Hannah (“the Respondent”)**

**Tribunal Members:**

**Mr Andrew Cowan (Legal Member) and Mrs Helen Barclay (Ordinary Member)**

**Decision:**

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

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicant to the Respondent commencing on 17th August 2020.
2. The application was dated 10th November 2022 and lodged with the Tribunal on or around that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 29<sup>th</sup> July 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by Signed For (recorded delivery) post on that day, and by email}, all in accordance with the provisions of the PRT. The Notice relied upon

Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 24<sup>th</sup> October 2022.

4. The application papers included a copy of a detailed agreement between the Applicants and Your Move dated 3<sup>rd</sup> November 2022 showing that the Applicants have instructed Your Move to proceed to market the Property and to obtain a Home Report.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Dumfries and Galloway Council on 10<sup>th</sup> November 2022 was included in the application papers.

## **The Hearing**

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 30<sup>th</sup> March 2023 at 1400.
7. The Applicants were represented on the call by their agent, Ms Georgia Marshall of Dumfries Mortgage and Property Shop
8. The Respondent also joined the conference call.
9. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. She explained that the Applicants had decided to sell the property as they did not consider that the ongoing rental of the property was financially viable. The Applicants have a portfolio of 17 properties which they let to private tenants. The Applicants are in the process of completing the sale of two of those properties and have further decided to sell the Property as soon as they have vacant possession. The Applicant’s agent further explained that the Applicants have instructed Your Move as agents to sell the Property. The Applicant’s agent confirmed the Applicants continues to seek an order for eviction notwithstanding that such an eviction order may be suspended by as long as a further six months in terms of the 2022 Act.
10. The Respondent confirmed to the Tribunal that he had no reason to doubt that the Applicant intended to sell the Property.
11. We asked both parties to address us further on reasonableness. There was no dispute between the parties as to any of the information given in this respect. We are informed that:
  - a. The Respondent lives alone at the Property.
  - b. The Respondent has two children aged 6 and 17. His children do not live with him although he does have access to them at weekends. The children stay with him overnight when he does have access. The elder child occasionally stays with him for longer periods.

- c. The Respondent has accrued rent arrears of £4157 as at March 2023.
- d. The Respondent accrued arrears at a time when he had challenges with his use of drugs and alcohol. He has used any available funds to put towards the cost of “detox” support.
- e. The Respondent has secured employment within the last week
- f. The Respondent believes that he may be entitled to benefits which may pay up to three months of rent arrears.
- g. The Respondent has attempted to secure alternative rented property, but has been unable to do so.
- h. The Respondent has been advised by the local authority that if his current tenancy is terminated he is likely to be offered Bed and Breakfast (one room) type accommodation.
- i. The Applicants had hoped to avoid seeking an order for eviction by reaching a reasonable agreement with the Respondent for payment of rent arrears. The Respondent has not been in consistent employment and has not been able to make reasonable payments towards regular rent liability and arrears.
- j. The Applicants wish to recover the Property to allow them to sell it. They do not consider that it is financially viable to continue with the lease of the Property. The mortgage payments the Applicants require to pay in connection with the property are £275 per month. They are required to pay a further £238 per annum for the insurance of the property. The rent chargeable in terms of the lease with the Respondent is £400 per month. The Applicants wish to sell the property to realise the capital value of the property.

## **Findings in Fact**

- 12. On 17th August 2020 the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
- 13. Notice to Leave was posted to the Respondent by signed for post on 29<sup>th</sup> July 2022.
- 17. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 part 1 of the 2016 Act on or around 10th November 2022.
- 18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Dumfries and Galloway council on the Applicant’s behalf 10<sup>th</sup> November 2022
- 20. The Applicants have instructed Your Move to market the Property and obtain a Home Report.
- 21. The Applicants intend to sell the Property, and it is reasonable that an order for eviction is granted

## Reasons for Decision

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent
24. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1.)...the landlord intends to sell the let property.
  - (2.) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord –
    - a. is entitled to sell the let property,
    - b. 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
    - c. The tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
  - (2) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) –
    - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
    - (b) 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.
25. The Applicants have engaged agents to sell the Property. They have entered into an agreement with Your Move as to the terms and conditions of estate agency services in connection with the property. They wish to sell the Property as they no longer consider that it is financially viable to let the Property, when they take into consideration rising mortgage costs and other costs in relation to the letting of the Property. We were satisfied on the evidence that the Applicants had a genuine intention to sell the property and that Ground 1 of Schedule 3 to the 2016 Act had been established. The Respondent accepted that this was the position.
26. The Tribunal also considered whether it was reasonable to issue an eviction order.

The Tribunal accept that the Applicants wish to sell the Property as it is no longer financially viable for them to continue to let this property. In particular the mortgage payments which the Applicants require to pay in connection with a security over the property have risen significantly over the past two years. The Applicants are currently prevented from raising the rent due in terms of the tenancy granted in respect of the Property. The financial position is further exacerbated by the fact that, although the Respondent has held the tenancy of the Property from August 2020, his rent account has been in arrears since December of that same year.

The Respondent explained that rent arrears accrued due his issues with alcohol and drugs, The Applicants have attempted to reach reasonable agreements with the Respondent in relation to payment of the arrears of rent, but no such agreement has been maintained by the Respondent. In the event that he is evicted from the Property the Respondent is likely to be provided with temporary accommodation by the local authority. The Respondent's children do not reside with him on a permanent basis and are resident elsewhere. The Tribunal consider that there is no reasonable prospect of the Respondent making payment of ongoing rent (or payments towards the arrears of rent) in the foreseeable future. As a consequence, the Applicants are unlikely to realise the future rent due in terms of the tenancy agreement between the parties for the Property and are unlikely to recover the full amount of rent arrears currently due. The provisions of cost of Living (Tenant Protection) (Scotland) Act 2022 mean that an eviction order granted by the Tribunal is unlikely to be capable of enforcement for a period of six months, during which time the Respondent will have further opportunity to settle his employment status and to secure alternative accommodation.

In all the circumstances the Tribunal, having considered the competing interests of the parties, the Tribunal are satisfied that it is reasonable to grant an order for eviction,

30. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion:

- Not to be executed prior to 12 noon on the earlier of:
- a. the day following the end of a period of 6 months beginning the date of our order or
  - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the cost of Living (Tenant Protection) (Scotland) Act 2022.

## **Decision**

31. In all circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 Act and the appeal period of this Decision

## **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.**

# A Cowan

30<sup>th</sup> March 2023

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Legal Member/Chair

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Date