



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/1608**

**Re: Property at 25 Braidwood Place, Linwood, Paisley, PA3 3SW (“the Property”)**

**Parties:**

**Mr Scott David Evans and Mrs Kayleigh Diane Evans, Havjarl, Montfield, Lerwick, Shetland, ZE1 0QA (“the Applicants”)**

**Ms Katherine Gordon, solicitor, Messrs Anderson and Goodlad, 52 Commercial Street, Lerwick, Shetland (“the Applicant’s Representative”)**

**Miss Zoe Smith, 25 Braidwood Place, Linwood, Paisley, PA3 3SW (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in terms of Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 be granted against the Respondent in respect of the Property.**

**Background**

- 1. This is an application for an eviction order.**
- 2. The Applicants seek recovery of the Property under Grounds 1 and 11 of Parts 1 and 2 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**
- 3. An application for an order of payment (FTS/HPC/CV/22/1771) was dealt with at the same time.**

## **Case Management Discussion**

- 4. A case management discussion was held by teleconference on 6<sup>th</sup> October 2022 when the Respondent was present and Ms Katherine Gordon, solicitor represented the Applicants.**

## **The Hearing**

- 5. A Hearing was held by audio conference on 30<sup>th</sup> November 2022. The Applicants were present and were represented by Ms Katherine Gordon, solicitor. There was no appearance by the Respondent.**

## **Preliminary Matters**

- 6. Commencement of the Hearing was delayed until 10.10 am. There was no appearance by the Respondent. It was noted that she had been present on 6<sup>th</sup> October 2022 when the date for the Hearing had been fixed. It was further noted that the Tribunal had sent a recorded delivery letter to the Respondent dated 25<sup>th</sup> October 2022 which had been signed for on 28<sup>th</sup> October 2022 and that the letter provided confirmation of the date of the Hearing and information on participating in it. The Applicant's Representative had sent a letter by email to the Tribunal on 16<sup>th</sup> November 2022 with various attachments and productions. That email had been copied to the Respondent and her advocacy worker. The letter made reference to the case next calling on 30<sup>th</sup> November 2022. In the circumstances, the tribunal considered it appropriate to proceed with the Hearing.**
- 7. Ms Gordon said that, if the tribunal found Ground 1 to be met, then there would be no requirement to consider Ground 11. It was noted that, at the case management discussion, the Respondent had not challenged that the eviction Ground 1 exists and that it is the Applicants' intention to sell the Property. She had submitted no written representations on the matter. Her advocacy worker had submitted a letter to the Tribunal in which it was stated "Ms Smith fully understands why the Landlord is taking this course of action and she will move the instant safe and appropriate accommodation is available."**
- 8. The tribunal accepted that the Applicants had satisfied it that it is their intention to sell the Property and that, what required to be determined was whether or not it is reasonable to grant the order of eviction.**

## The Law

### 9. *Private Housing (Tenancies) (Scotland) Act 2016 (as amended)*

#### *Section 51 First-tier Tribunal's power to issue an eviction order*

*(1) The First-tier 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 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

### 8. *Private Housing (Tenancies) (Scotland) Act 2016 (as amended)*

#### **SCHEDULE 3 EVICTION GROUNDS**

##### **8.1 PART 1 LET PROPERTY REQUIRED FOR ANOTHER PURPOSE**

###### ***Landlord intends to sell***

**1 (1) It is an eviction ground that 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, *and***

**(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.***

**(3) 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.**

#### **Findings in Fact**

- 9.1 The Applicants are the proprietors of the Property and have been so since 2<sup>nd</sup> October 2015.**
- 9.2 The Respondent is a tenant of the Property in terms of a private residential tenancy agreement dated 16<sup>th</sup> August 2020.**
- 9.3 The monthly rent for the Property is £700.**
- 9.4 The Respondent was been served with notice to leave dated 22<sup>nd</sup> November 2021.**
- 9.5 Messrs Allan and Harris, estate agents have been instructed to sell the Property.**
- 9.6 The Property is the former family home of the Applicants.**
- 9.7 The Applicants reside in Shetland and have a Scottish Secure Tenancy of the property at Havjarl, Montfield, Lerwick, Shetland, ZE1 0QA which has three bedrooms.**
- 9.8 The Applicants have four children.**
- 9.9 The Respondent has health issues and has two children under 11 who reside with her.**
- 9.10 The Respondent has arrears of rent of £6,331.17.**
- 9.11 The Applicants receive direct payment of the sum of £461.52 per month in respect of rent and this comes from Housing Benefit.**
- 9.12 The Applicants' monthly costs in respect of the Property total £579.60.**
- 9.13 The monthly rent which the Applicants pay for their property in Lerwick is £461.52.**

#### **Findings in Fact and Law**

- 10.1 The Applicants intend to sell the Property.**
- 10.2 It is reasonable to grant an order of eviction.**

#### **Reasons**

- 11. The tribunal had copies of the private residential tenancy agreement and the Title Sheet for the Property.**
- 12. The tribunal had a copy of an agreement with Allan and Harris, estate agents dated 2<sup>nd</sup> August 2022 in respect of the sale of the Property.**
- 13. The tribunal had vouching which confirmed that the monthly outgoings of the Applicants in respect of the Property is £579.60 and that these comprise mortgage payments, property insurance, landlord registration fee, maintenance costs and television licence. The tribunal also had an up to date rent statement.**

14. Ms Gordon said that the Applicants required to evict the Respondent so that they could sell the Property. She said that the Applicants are living in rented accommodation in Shetland and are having to pay rent as well as the mortgage payments for the Property. At the case management discussion, and in her written submissions, Ms Gordon stated that the mortgage payments have recently increased because the Applicants no longer have the advantage of a fixed interest rate.
15. Ms Gordon said that the Applicants purchased the Property in 2015 as a family home and had then moved to Shetland. She said that the Applicants have four children.
16. Ms Gordon said at the case management discussion, and in her written submissions, that the Applicants own no other property and could not easily sell the Property with a tenant in situ especially since access had been denied to the estate agent. Ms Gordon's written submissions detailed unsuccessful attempts which the estate agent had made to get access to the Property.
17. At the case management discussion, the Respondent had said that she had significant health issues and that carers attend to her daily. The Respondent had said that she lives in the Property with her children who in October 2022 had been aged 9 and 10.
18. At the case management discussion, the Respondent had said that she is bed bound and cannot go downstairs. She said that the house is not suitable for her and that she has been trying to get alternative housing. The undated representations which You First Advocacy had submitted on behalf of the Applicant stated that efforts had been made to find appropriate accommodation for the Respondent and her family and that the Property is unsuitable for her needs.

#### **Submissions**

19. Ms Gordon asked the tribunal to accept that the Applicants were entitled to sell the Property and that they intend to do so.
20. Ms Gordon said that the Applicants require to sell the Property so that they can purchase one in Shetland and that their current rented house is not suitable for their needs.
21. Ms Gordon said that the Respondent's continued occupation of the Property is effectively being subsidised by the Applicants who are suffering financially as evidenced by the vouching which had been lodged.
22. Ms Gordon said that the Respondent is seeking public sector housing and that her application is unlikely to progress until an order of eviction has been granted. She said that the Property is unsuitable for the

**Respondent's needs and that it would therefore be reasonable for the order to be granted. This would allow her to be housed in appropriate accommodation.**

- 23. Ms Gordon said that it is reasonable for the eviction order to be granted because the Applicants cannot sell the Property when the Respondent is residing in it and that it is not reasonable for them to subsidise the Respondent's occupation of the Property.**

## **Discussion**

- 24. The tribunal accepted, from the documentation before it, that the Applicants own the Property and had put in train the steps necessary to sell it.**

- 25. The question of deciding whether or not it is reasonable to grant an order of eviction is a balancing exercise. The Applicants are sustaining financial loss on an ongoing basis because the rent, being constantly and increasingly in arrears, is not sufficient to pay the costs which they incur in respect of the Property. It is also a right of an owner of a property to sell it. The tribunal accepted that the Applicants wanted to sell the Property to progress with their life in Shetland. The Respondent was not present but, notwithstanding that, the tribunal had information which she had disclosed at the case management discussion and her advocacy worker had also submitted written representations. The Respondent has an undisclosed medical condition and two children of primary school age. Both she and the advocacy worker have stated that the house is unsuitable. At the case management discussion, the Respondent had said that she can effectively only live in the upstairs part of the Property.**

- 26. On balance, and taking into account the respective position of the parties, the tribunal found that the order of eviction should be made.**

## **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.**

**Martin J. McAllister  
Legal Member  
30<sup>th</sup> November 2022**