



**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/22/2754**

**Re: Property at 9B Weston Terrace, West Kilbride, KA23 9JX (“the Property”)**

**Parties:**

**Mr David Armstrong and Mrs Susan Ann Armstrong, 1A Barony Glebe, West Kilbride, KS23 9BP; 1A Barony Glebe, West Kilbride, KA23 9BP (“the Applicants”)**

**Ms Amanda Heath, 9B Weston Terrace, West Kilbride, KA23 9JX (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 9B Weston Terrace, West Kilbride, KA23 9JX under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 8 August 2022, the Applicants’ solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the

Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The basis of the Application was that the Applicants want to sell the Property under Ground 1 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 11 January 2019 between the parties, a Notice to Leave dated 13 May 2022 with Sheriff Officers Execution of Service dated 16 May 2022, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with an email addressed to North Ayrshire Council dated 8 August 2022 and a letter dated 13 May 2022 from the Applicants’ solicitor.
3. On 6 September 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 4 October 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 10 November 2022. The Respondent required to lodge written submissions by 25 October 2022. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer on 5 October 2022 and the Execution of Service was received by the Tribunal administration.
5. On 31 October 2022 the Respondent requested the Tribunal to postpone the CMD assigned for 10 November 2022. The request was accompanied by various documents. The request was opposed by the Applicants’ solicitor who also submitted further documents. The Tribunal refused the request to postpone the CMD.

### **Case Management Discussion**

6. The Tribunal proceeded with the CMD on 10 November 2022 by way of teleconference. Mr Walsh from Jas Campbell & Co, solicitors appeared on behalf of the Applicants who were also in attendance. The Respondent appeared on her own behalf.
7. The Tribunal had before it the papers lodged with the application namely the Private Residential Tenancy Agreement dated 11 January 2021 between the parties, a Notice to Leave dated 13 May 2022 with Sheriff Officers Execution of Service dated 16 May 2022, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with covering email addressed to North Ayrshire Council dated 8 August 2022, and a letter addressed to “Whom it May Concern” dated 13 May 2022 from Jas Campbell & Co solicitors. The Tribunal also had before it the documents the Respondent had lodged at the postponement request stage including photographs of

Statements of Fitness for Work dated 6 July, 1 August, 23 August and 28 September 2022, photographs of letter dated 17 and 18 October from Ayrshire and Arran Healthboard showing the results of an endoscopy carried out on 21 September 2022, a photograph of a letter from the Applicants to the Respondent dated 17 August 2019, a photograph of a letter from the Applicants to the Respondent dated 1 March 2020, two photographs of a letter dated 7 February 2022 from the Applicants to the Respondent, and a letter dated 21 April 2022 from Ayrshire and Arran Healthboard addressed to the Respondent for an orthopaedic outpatient appointment on 4 May 2022. The Tribunal also had before it an email dated 22 July 2022 from the Respondent to the Applicants' solicitor and part of an Upper Tribunal decision by Sheriff Deutsch. The Tribunal also had a copy of the Respondent's written submissions dated 31 October and 1 November 2022 in support of her postponement request and the Applicants' opposition dated 1 November 2022. The Tribunal noted the terms of these documents.

8. Mr Walsh moved the Tribunal to grant an Order for repossession. He submitted his clients were in their 70s. They own several properties. They have sold one property already and wish to sell their other four properties to fund their retirement. The Tribunal noted the Notice to Leave dated 13 May 2022 which relied on Ground 1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act and also the letter dated 13 May 2022 which stated that his firm Jas Campbell & Co had been instructed to deal with the marketing and sale of the Property as soon as possible once repossessed. He submitted the Respondent had known from about August 2021 that the Applicants wanted to sell the Property. He submitted he was not aware of their being a shortage of private rented accommodation in the area. He understood the Respondent had an adult child but no dependents living with her. He was aware that she had had a number of other private tenancies.
9. Miss Heath submitted that any time she had raised issues such as outstanding repairs the Applicants served her notice to leave. They had done that on a couple of occasions but had then withdrawn the notices. On one occasion Mrs Armstrong visited her and asked to have the notice back. Miss Heath stated she had told Mrs Armstrong she no longer had the notice. She explained that that had not been true and that she wanted to keep it and not give it back to Mrs Armstrong. She stated she feels threatened and that no-one wanted to live like that. She had looked for other accommodation in the area but nothing was available.
10. She stated she did not believe that the Applicants needed to sell the Property. She understood from reading up on the ground of eviction from sources such as Shelter that they needed to prove they needed to sell the Property. If she were evicted she would be destitute. She had asked to purchase the Property from the Applicants, but they had refused. Her adult son stays with her occasionally. He was looking to buy a property but had so far been

unsuccessful and now that interest rates were going up that was not now possible. She had hoped to stay with him on a temporary basis. She confirmed she had been in contact with the local Council about rehousing. She went onto explain that she had a hernia and was not in a position to move. The Tribunal noted the terms of the letter dated 17 and 18 October 2022 from Ayrshire and Arran Healthboard showing the results of an endoscopy carried out on 21 September 2022 namely that she had a normal gullet and stomach, that she had a hiatus hernia and that no changes to her medication was required.

11. The Tribunal invited Mr Walsh to respond. He stated that the Local Authority has certain duties towards the Respondent under the homelessness application and it was not the case that she would find herself on the street. With regards to the Respondent's health he submitted there was nothing to show that her condition should preclude eviction and that what she had submitted showed that her treatment had not changed after ongoing tests. He submitted the Respondent had not told the truth when she stated in her email of 22 July 2022 that she had not received the Notice to Leave. He referred to that email and to the Upper Tribunal decision which showed she had denied in that case that she had received notice. He referred to the Execution of Service from the Sheriff Officers lodged with the Application which showed the Notice to Leave had been served on her.
12. In answer Miss Heath advised that she had inadvertently placed the Notice to Leave dated 13 May 2022 (which was in a plain envelope) with some junk mail in her recycling bin. On being questioned by the Tribunal she confirmed she had received the Notice to Leave.
13. Mr Walsh questioned the Respondent's position that if there were various issues about the condition of the Property and repairs, why she would want to continue to live there. He explained that his clients had previously made their intention clear to the Respondent they wanted to sell the Property. The Tribunal referred Mr Walsh to the letter dated 13 May 2022 on Jas Campbell & Co headed paper. The Tribunal asked him to confirm as an officer of the court what was stated with regard to the Applicants' intention to sell was indeed correct. Mr Walsh confirmed it was indeed his clients' intention to sell.
14. Miss Heath again questioned the Applicants' intention to sell, but accepted after being referred to it by the Tribunal that the letter dated 13 May 2022 stated that intention and that Mr Walsh as an officer of court had confirmed that position. She stated that at some stage Mr Armstrong had erected a hand made sign at the bottom of the garden to show the Property would be available soon.

15. The Tribunal sought further clarification as to the chronology of events with regards to notices to the Respondent that the Applicants wanted to sell and in particular to the notice dated 19 August 2019. Mr Walsh explained that his clients had given the Respondent another chance to remain in the Property after the letter dated 19 August 2019 as they then decided not to proceed with the sale. The pandemic then struck. He had not seen the notice dated 18 August 2021 and referred to in the letter dated 7 February 2022 and had given his clients advice that they should start again to conform with the 2016 Act, hence the Notice to Leave dated 13 May 2022 upon which the application proceeded. He did not believe that he needed to give a reason as to why his clients had decided to sell the Property and not one of the other properties they owned but understood that it was a case of “last in first out” in terms of the tenants in the properties. Miss Heath disputed that.

### **Findings in Fact**

16. The Applicants and the Respondent entered into a Private Residential Tenancy Agreement dated 11 January 2019 in relation to the Property.

17. The Applicants are the heritable proprietors of the Property. They are entitled to sell the Property. The Applicants are in their 70s and own several properties. They have sold one property and intend to sell their other four remaining properties to fund their retirement.

18. The Applicants gave the Respondent notice to leave on 19 August 2019 that they wanted to sell the Property. This did not comply with the 2016 Act. The Applicants did not proceed with the sale of the Property.

19. The Applicants gave the Respondent notice that they wished to sell the Property on 18 August 2021.

20. The Applicants wrote to the Respondent on 7 February 2022 referring to the notice they gave the Respondent dated 18 August 2021.

21. The Applicants intend to sell the Property or put it on the market within 3 months of gaining possession. The Applicants have instructed Messrs Jas Campbell & Co, solicitors to manage and sell the Property as per the letter dated 13 May 2022.

22. The Applicants served a Notice to Leave on the Respondent 13 May 2022. The Notice to Leave was served on the Respondent by Sheriff Officers on 13 May 2022. The Sheriff Officers produced an Execution of Service on 16 May 2022. The Notice to Leave required the Applicant to leave the Property by 6 August 2022. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act. The Respondent received the Notice to Leave dated 13 May 2022.

23. The Applicants served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on North Ayrshire Council on 8 August 2022.
24. The Respondent remains in the Property. She lives alone.
25. The Respondent has a hiatus hernia and requires no change in her current medication as per the letter dated 17 and 18 October 2022 from Ayrshire and Arran Healthboard.
26. The Respondent has been looking for alternative accommodation.

### **Reasons for Decision**

27. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal considered the Private Housing (Tenancies) (Scotland) Act 2016.
28. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This ground is a discretionary grounds of eviction. As well as being satisfied the Applicants are entitled to sell the Property and that they intend to sell the Property or put it up for sale within 3 months of gaining possession the Tribunal has to be satisfied that it is reasonable to evict.
29. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
30. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicants' intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of Schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) which in this case was specified as 6 August 2022.
31. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondent by Sheriff Officers on 13 May 2022. The Tribunal was accordingly satisfied the Notice to Leave was validly served on 13 May 2022. On the basis of the Respondent's acceptance she had in fact received the Notice to Leave despite the terms of her email to the Applicants' solicitor dated 22 July 2022

which stated she had not received the Notice to Leave, the Tribunal was satisfied she had received the Notice to Leave on 13 May 2022.

32. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 6 August 2022. The application was made on 8 August 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 84 days in terms of the 2016 Act. Accordingly, the Notice to Leave complies with Section 62.
33. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on eviction grounds stated in the Notice to Leave, namely Ground 1.
34. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by both Mr Walsh and Miss Heath. Although the Respondent disputed that the Applicants had no intention of selling the Property based it appeared on her past experiences of receiving previous such notices, it appeared that the Applicants had simply decided not to proceed with the sale in 2019 and that on legal advice they had started the process afresh in May 2022. The Tribunal considered the Applicants had provided evidence of their intention to sell in terms of Ground 1, that evidence being the letter dated 13 May 2022 from Jas Campbell & Co which showed that they were instructed to market and sell the Property. The Tribunal had questioned Mr Walsh about this letter. As an officer of the court he confirmed that his firm had so been instructed. Accordingly despite the Respondent's misgivings the Tribunal were satisfied that the Applicants did indeed intend to sell the Property as soon as they regained possession. The Tribunal was satisfied that they were entitled to do so as owners.
35. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when they obtained possession of it. The Tribunal accepted the submissions of Mr Walsh that they wanted to sell their remaining 4 properties in order to fund their retirement and that they had already sold one property. The Respondent had been given notice to leave more than 6 months previously in terms of the Notice to Leave but had had an indication from the Applicants prior to then that they wanted to sell the Property. The Tribunal accepted the Respondent's submissions that she had a hiatus hernia and noted it did not need a change in her existing medication. The Tribunal accepted she was sensibly taking steps to find alternative accommodation. She had no dependents. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.

36. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

37. The Tribunal granted an order for repossession. The tenancy will end on 9 January 2023. The decision of the Tribunal was unanimous.

### **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.**

# Shirley Evans

10 November 2022

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Legal Chair

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Date