



**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/22/3820**

**Re: Property at 74 Dalgleish Avenue, Clydebank, G81 6DZ (“the Property”)**

**Parties:**

**Mr Mark Gallacher, 17 Russell Road, Duntocher, G81 6JP (“the Applicant”)**

**Miss Stacey Paterson, 74 Dalgleish Avenue, Clydebank, G81 6DZ (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Linda Reid (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 1 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: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) email instructing home report

3. The applicant, the applicant's partner (Janine Franssen) and his agent, Kris Brown from Source Property (Scotland) Limited appeared. The respondent also appeared.

### Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 1 (intention to sell). The applicant wanted the property back, in order that it could be sold and something bought for him and his partner which was more suitable to their needs. He advised that their current property was no longer suitable to the landlord's partner's needs as it was a top floor flat with 4 flights of stairs to get to it. They were looking for a property which was on ground level. The landlord and his partner had been together for 20 years. The landlord's partner was unwell and by way of example she had been in hospital 5 times since the notice to leave had been served.
5. They required vacant possession of the property, they had tried to find someone to buy the rental property with a sitting tenant but had not been successful. They intended to move into the property as soon as the tenant had left it, as there was only one flight of stairs in the property, it was still not ideal, but it was better than their present accommodation, and they would keep looking for a more suitable property for them to buy.
6. The respondent advised that she was not opposing the order sought. She advised that the landlord had been a brilliant landlord. She advised that she was actively looking for somewhere to live, and the only reason that she had not left the property already was because she had nowhere else to go to. She resided in the property with her 10 year old child and she was 7 months pregnant with her second child. She had contacted the local authority (and also local housing associations) she was on the waiting list. She was hoping to find a 3 bedroom property. She advised that her housing application

had been elevated by the housing department given her circumstances, she understood that she would be deemed non-intentionally homeless tomorrow.

### Findings in Fact

7. The Tribunal found the following facts established: -
8. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 21 August 2019.
9. The tenant was Stacey Paterson.
10. The landlord was Mark Gallacher.
11. The property was 74 Dalglish Avenue, Clydebank.
12. There was submitted a notice to leave dated 24 June 2022, stating that an application would not be made until 19 September 2022. It sought eviction under ground 1 - your landlord intends to sell the let property.
13. The notice to leave had been emailed to the tenant. There was evidence of service.
14. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority.
15. There was a copy of an email sent on 2 September 2022 from "one survey" confirming instruction of a home report for 74 Dalglish Avenue, Clydebank.
16. The title deeds for the property show that Mark Gallacher is the owner of the property.

### Reasons for Decision

17. 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.

18. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms :-

- (1) It is an eviction ground that the landlord intends to sell the let property.*
- (2) The First-tier Tribunal must 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.*
- (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.*

19. Both parties appeared. The respondent did not oppose the order sought. The applicant appeared and confirmed that that he wished to proceed to sell the property. The applicant had submitted documentary evidence in support of the application. The documentary evidence confirmed that the applicant had instructed a home report for the property. The title deeds showed that the landlord was the heritable proprietor of the property, he therefore had title to sell it.

20. Given that it appeared that the terms of ground 1 were met. The tribunal required to proceed to consider if it would be reasonable to grant the order. We took into account of both parties' submissions. The applicant appeared to have a clear reason why he wished to sell the property, as he required something more suitable for his partner, given her current ill-health. While we note the applicant advised that he would move into the property when the respondent moved out, his agent advised that the applicant would still be actively looking for another property to buy and that he was going to sell the property.

21. We noted that the respondent did not oppose the order and was in fact apologetic for having not moved out sooner. We took into account that she resided in the house with her 10 year old child and was 7 months pregnant. We also noted that she had remained in the property as she had nowhere else to go. We note that she has been in touch

with the local authority to apply for housing and she was hoping that she would offered something through that avenue.

22. The tribunal was prepared to grant the order for recovery of possession, given that the respondent was not opposing the order and having regard to the reasons provided by the applicant that he requires to sell the property in order to buy something which is suitable for the health needs of his partner. We consider that it would be reasonable to grant the order for eviction.

23. We would note and observe the current circumstances of the respondent, in that she has a 10 years old child and she is 7 months pregnant, and therefore also has a pressing need to find new suitable accommodation. We would encourage her to contact the local housing department as soon as she receives this decision and confirm to them that an eviction order has now been granted.

#### Decision

24. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 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.**

Melanie Barbour

21 February 2023

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Legal Member/Chair

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Date

