



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/22/2329**

**Re: Property at 200 Liberty Rd, Bellshill, North Lanarkshire, ML4 2EL (“the Property”)**

**Parties:**

**Mr Michael Tarry, 24 Church Road, Milford, Godalming, Surrey (“the Applicant”)**

**Miss Monika Benbenkowska, Mr Adam Pietrysiak, 200 Liberty Rd, Bellshill, North Lanarkshire, ML4 2EL (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction on the basis of paragraph 1 of schedule 3 of the 2016 Act be made in favour of the Applicant.**

**1. Background**

- 1.1 This is an application for an eviction order in respect of a private residential tenancy between the parties. The application was accompanied by copies of the written tenancy agreement, the notice to leave issued, a rent statement, breakdown of costs incurred by the Applicant and letters from an estate agent engaged to market the property for sale. The eviction order was sought solely on the basis of paragraph 1 of schedule 3 of the 2016 Act.
- 1.2 No written representations had been received from the Respondents however, they had requested a translated copy of the application. A copy translated into Polish had been provided.

## **2. The Case Management Discussion**

- 2.1 The case management discussion took place on 7 February 2023 by teleconference. The Applicant was represented by Mr Nixon of Ritehome Ltd. The Second Respondent was personally present and represented the First Respondent, his partner. The Tribunal queried with the Second Respondent whether he was able to take part without the assistance of an interpreter. He confirmed that he was and would alert the Tribunal if there was anything discussed which he did not understand.
- 2.2 The Tribunal heard from Mr Nixon. He confirmed that the Applicant was seeking to sell the property. He had been considering a sale for some time. An estate agent had been engaged however, vacant possession was first required. The property required significant refurbishment to enable the best possible price to be obtained. The Applicant was considering installing a new kitchen, bathroom and flooring throughout the property. As far as Mr Nixon was aware, the property was the only property owned by the Applicant in Scotland. Due to costs incurred in connection with the tenancy, the Applicant was making a loss each month. The loss was exacerbated by a failure on the part of the Respondents to pay the full rent due, with arrears of rent of £2410.00 now due. The Applicant had entered into a new tenancy agreement with the Respondents in February 2022 however, the Second Respondent had occupied the property as sole tenant since October 2018.
- 2.3 The Second Respondent confirmed he had resided at the property since 2018. His partner, the First Respondent, had moved in with him in February 2022. She did not speak English. They lived with the First Respondent's daughter, aged 15, and the Second Respondent's daughter, aged 19. The Second Respondent was in employment as a warehouse operative and earned around £1500.00 per month. The First Respondent was unemployed but looking for work. His daughter had previously been in temporary employment which had now ended and was also looking for work. She did not claim benefits. The Respondents received around £390.00 each month in Universal Credit which included around £100.00 in respect of the housing costs element. Arrears of rent had arisen due to the additional cost the Second Respondent faced in supporting the First Respondent and her daughter. He had contacted the local authority after receiving the intimation of the application for assistance with rehousing. They had not yet provided any assistance, instead advising him to await the outcome of the application. He had not looked for any alternative accommodation in the private sector, believing it to be unaffordable. He had not been aware that the Applicant was considering selling the property until the notice to leave had been received.
- 2.4 Mr Nixon then confirmed that a colleague from Ritehome Ltd and visited the Respondents in December. They had seen a letter from the local authority confirming that only general priority had been awarded for rehousing. After

hearing from the parties, the Tribunal adjourned for a short period to consider the matter.

### **3. Reasons for Decision**

3.1 The power of the Tribunal to grant an eviction order is governed by sections 51 to 53 of the 2016 Act. In terms of section 52(3) of the 2016 Act, the Tribunal is not to grant an order unless it is accompanied by a copy of the notice to leave given to the tenants. In the present application, the notice to leave was served by email on 11 April 2022. It specified that no application would be made earlier than 7 July 2022. Accordingly, the notice to leave was valid.

3.2 Although previously a mandatory ground for issuing an eviction order, the Tribunal now required to consider whether it was reasonable to issue an eviction order on the basis of Paragraph 1 of Schedule 3 of the 2016 Act, being the ground relied upon by the Applicant in the present application. The live issue in the present application therefore appeared to one of reasonableness. After hearing submissions from the parties, the Tribunal concluded that there was no significant factual dispute between them and that a hearing was not required.

3.3 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole circumstances in which the application was made.

3.4 In all of the circumstances, the Tribunal considered that it was reasonable to grant the order sought by the Applicant. The Tribunal placed particular weight on the following factors:-

- The Applicant had a reasoned intention for selling the property in that the costs incurred exceed income;
- The Respondents had approached the local authority for assistance and had registered for housing, with it being within the knowledge of the Tribunal that the local authority may owe obligations to the Respondents under the Housing (Scotland) Act 1987 to ensure they did not become homeless;
- Although not a specified ground of eviction, the Respondents had failed to pay a sum of rent which had impacted further on the viability of the tenancy from the Applicant's financial perspective;
- The Second Respondent was in employment and, although he believe the private sector to be unaffordable, he had not taken any steps to look for alternative accommodation since receiving the notice to leave in April 2022.

3.5 The Tribunal noted that the Respondents resided with a dependent child under the age of 16. It therefore considered it appropriate to order a delay in enforcement of the eviction order until 14 April 2023 as permitted by Rule 16A of the Chamber Rules. This would allow a further opportunity to the Respondents to engage with the local authority for rehousing.

### **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.**

Alastair Houston

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Legal Member/Chair

13 February 2023  
Date