



**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) 2016**

Chamber Ref: FTS/HPC/EV/23/1701

**Re: Property at 103 Murray Terrace, Smithton, Inverness, IV2 7WY (“the
Property”)**

Parties:

Mr Jonathan Lauder, 2 Silver Birches, Inverness, IV2 6DW (“the Applicant”)

**Mr James Fraser, 103 Murray Terrace, Smithton, Inverness, IV2 7WY (“the
Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Helen Barclay (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 should be granted.**

1. On 21st May 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property using Ground 1A of Schedule 5 of the Private Housing(Tenancies)(Scotland) 2016.
2. Lodged with the application were: -
 - a. Copy Notice to Leave dated 24th February 2023
 - b. Proof of service of 1
 - c. Section 11
 - d. Proof of service of 3
 - e. Statement by Applicant
 - f. Statement of Income and Outgoings for the Applicant and his wife
 - g. Schedule of Debt for the Applicant and his wife

- h. Emails from the Applicant's financial adviser
 - i. Email dated 2nd May 2023 from Macleod & MacCallum, solicitors confirming instruction to deal with the sale
 - j. Mortgage Statement for the property
 - k. Various bank statements and credit card statements
 - l. Ancillary documents to show payments due to be made by the Applicant and his wife
3. The Applicant explained in his statement that he had initially sought to rent to the Respondent by way of a lodger agreement, which is why there was no tenancy agreement in place. He accepted in his statement that the tenancy was a Private Residential Tenancy.
 4. The Application was served on the Respondent by Sheriff Officers on 28th September 2023.
 5. The Respondent sent an email to the Tribunal, dated 15th October 2023 confirming he wished to oppose the application and providing some information.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented himself. There was no attendance by the Respondent or any representative on his behalf.
7. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
8. The Applicant sought an order for eviction in terms of ground 1A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He said that he needed to sell the property to alleviate hardship as he was in a dire financial state. He said that it was his intention to market the property for sale as soon as he had possession of it and referred to the letter from his solicitors, Macleod and McCallum.
9. The Applicant referred to the documents he had lodged in support of his application, including the Schedule of Income and Outgoings and the Schedule of Debt. He said that his finances were now in a worse state, and he was having to use credit cards to meet his bills.
10. The Applicant said that the respondent had paid his rent throughout the tenancy, but he had not made a payment on 1st November 2023.
11. In relation to reasonableness the Applicant confirmed that he has a wife and toddler daughter. They live in his wife's property, which has a mortgage on it. The monthly payments on the mortgages on each of their rental properties are higher than the monthly rental.

12. The Applicant said that the property is a one bedroomed top floor flat. As far as he is aware the Respondent lives alone. He is not sure if the Respondent is in employment and he does not know if the Respondent received benefits. He has not been able to speak to the Respondent for some time.
13. The Tribunal also considered the terms of the Respondent's email of 15th October 2023. The respondent makes allegations about the Applicant not being a registered landlord, not having lodged the tenancy deposit in an approved scheme and there being no heating in the house and potential carbon monoxide poisoning. While these are serious issues they are not relevant to the matter before the Tribunal today.

Findings in Fact

1. There is no formal tenancy agreement in place but it is accepted that parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. A Notice To Leave, dated 24th February 2023, was served timeously and correctly;
3. The Application was served on the Respondents by Sheriff Officer on 28th September 2023;
4. The Applicant has the right to sell the property;
5. The Applicant is suffering financial hardship;
6. The Applicant intends to sell the property as soon as the Respondent vacates;

Reasons For Decision

14. Ground 1A was introduced by Section 4(3) Schedule 2 of the Cost of Living (Tenant Protection)(Scotland) Act 2022 and states as follows:

Landlord intends to sell property to alleviate financial hardship

1A(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph](#)

(1) applies if—

(a) the landlord—

(i) is entitled to sell the let property,

(ii) is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(iii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(e) 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, and

(f) an affidavit stating that the landlord has that intention.”

15. The Tribunal accepted the evidence of the Applicant, both oral and written. It was clear from the documents that he had submitted that he was suffering financial hardship.

16. The Tribunal also has to decide if it is reasonable to grant the eviction order. Given the level of financial hardship it did look as if the Applicant's position was not sustainable. He is a married man with a toddler daughter. The Respondent is a single man with no dependents. Balancing the positions of each party the Tribunal conclude that it is reasonable to grant the order.

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.



Legal Member/Chair

Date 3rd November 2023