



**Decision and 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**

**Chamber Ref: FTS/HPC/EV/23/1668**

**Re: Property at 59 Fogwatt Lane, Elgin, IV30 6GG (“the Property”)**

**Parties:**

**Mr Aaron Wroblewski, 616 Chapel Court, Mayfield, Kentucky, 42066, United States (“the Applicant”)**

**Mrs Jeanette Imrie, Mr Thomas Imrie, 59 Fogwatt Lane, Elgin, IV30 6GG (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1 of Schedule 5 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the Applicant is entitled to sell the let property, intends to sell the let property for market value or at least put it up for sale within three months of the tenants ceasing to occupy it and it is reasonable on account of these facts to grant the eviction order.**

**Background**

1.This application for an eviction order in terms of Rule 109 of the tribunal rules of procedure was first lodged with the Tribunal on 24<sup>th</sup> May 2023 and was accepted by the Tribunal on 15<sup>th</sup> June 2023.The application first called for a case management discussion on 3rd August 2023 at 2 pm.

**Case Management Discussions**

2. The Applicant was represented by Miss Matthew of Bannatyne Kirkwood France solicitors at the first case management discussion on 3<sup>rd</sup> August 2023. There was no appearance by the first Respondent, but the second Respondent Mrs Jeanette Imrie was present on the teleconference call and confirmed that both she and her husband, the second Respondent were aware of the case management discussion but that he could not attend.

3. The tribunal had sight of an application for an eviction order, a tenancy agreement, a Notice to Leave, proof of service of the Notice to Leave by e-mail, an estate agency agreement, a notice sent to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003 together with an e-mail sending this notice.

4. For the Applicant Miss Matthew indicated that the parties had entered into a private residential tenancy at the property in October 2019 and the property owner no longer wished to be a landlord and wishes to sell the property given the current market conditions and mortgage rates. Miss Matthew understood that this was the only property which the Applicant rented out.

5. Mrs Imrie explained that she had been to the local council and understood that the position of both her and her family was protected in terms of the cost-of-living legislation and that she could not be evicted until 30<sup>th</sup> of September of 2023 at the earliest. There was discussion about the earliest date that an order could be enforced if it was granted.

7. Mrs Imrie explained her family's situation to the tribunal. When they had received the notices regarding eviction, she and her husband had put their names down with a local housing association and with the council. They have three children, two of school age and one at college in Aberdeen. Her husband's business is in the local area. She said they were not objecting to an eviction order being granted nor were they suggesting that it would be unreasonable, but she was having difficulty in obtaining other accommodation. She said her understanding was there were few houses in the area for rent, her husband's business was not doing well and everything in their lives was being impacted by the eviction. Elgin was a difficult place to find somewhere. She said they were a working family, and they could afford the rent they were paying in terms of the current tenancy but not what was being asked in terms of other private tenancies at this time and so they were looking at social housing. She said that she and her family were 94<sup>th</sup> on the council list.

8. Mrs Imrie also explained that her children were home educated but as such it was important that they had a social life outside the home. Her children all had social connections in the Elgin area, and it was important to the family that these continue. She said that her eldest child travels to college in Aberdeen. She had made enquiries about local authority accommodation. She was hoping to avoid temporary accommodation but had been given no timescale for any property becoming available.

9. Mrs Imrie indicated that in all the time she and her husband had rented the property she had never spoken to the landlord and could not comment on his desire to sell the property. She indicated she felt that to delay matters would prolong the inevitable. She

mentioned further that her husband has a huge garage for his business, a business which kept the family afloat and they couldn't afford anywhere else like that at this time. She said they were living in limbo and were hoping that the tribunal would when granting an order give them as long as possible to find another property so that she could have some peace of mind.

10. The tribunal members adjourned to consider they could come to a decision on the application. The tribunal considered that it required further information as to why the Applicant wished to sell the property to allow full consideration of reasonableness, in terms of making any order. The Tribunal adjourned the case management discussion to a later date to allow Miss Matthew to obtain further information from the Applicant and indicated it would issue a Direction requiring this information.

11. Mrs Imrie gave an e-mail address to the tribunal clerk and confirmed her consent to contact at that e-mail address for both her and her husband the First Respondent.

12. The case management discussion was continued until 17<sup>th</sup> November 2023 at 10am. Miss Woolley appeared for the Applicant and there was no appearance by or on behalf of the Respondents. The Tribunal was aware that intimation of the date and dial in codes for the teleconference had been given by email to the Respondents on the address given by Mrs Imrie at the first case management discussion. Fair notice appeared to have been given to the Respondents of the continued case management discussion. After hearing final submissions for the Applicant and before any decision was made on the application the Tribunal clerk telephoned the Respondent Mrs Imrie on a number which had been given for her to ensure that the Respondents were aware of the case management discussion. The Tribunal Clerk was able to speak to Mrs Imrie with Mr Imrie on the call and she advised that the Respondents were not joining the conference call and would be leaving the property.

13. The Tribunal had received further representations from the Applicant's solicitor before 17<sup>th</sup> November setting out the Applicant's reasons for seeking to sell the property, attaching mortgage statements and confirming that this property is the Applicant's only rental property.

14. Miss Woolley explained that the Applicant could no longer afford to rent out the property and was suffering substantial losses due to the difference between the rent being paid and increased mortgage payments which he was now required to make as interest rates had risen. He relied on the income from the rent to pay the mortgage and living expenses and the arrangement was no longer financially viable. He had no option but to sell the property at the earliest opportunity and had already entered into an estate agency agreement to market the property for sale. Miss Woolley submitted that it was reasonable for an order to be granted in these circumstances and noted that the Respondent did not oppose an eviction and if the order was granted the local authority would have an obligation to find accommodation for the Respondents if they had no accommodation at that time. Miss Woolley was advised of the contact made with the Respondents by the Tribunal clerk during the case management discussion. She said that this was new information as there had been no contact from the

Respondents. She submitted that an order was still necessary as it was not clear from the information when the Respondents might leave the property.

15. Miss Woolley accepted that if an order was granted the earliest date when this could be enforced would be 31<sup>st</sup> March 2024 give the latest extension to the enforcement provisions within the Cost of Living (Tenant Protection) (Scotland) Act 2022.

16. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

17. The parties entered into a private residential tenancy at the property with effect from 25<sup>th</sup> October 2019.

18. A Notice to Leave the property on the ground that the Applicant intends to sell the let property was sent by email to the Respondents on 24<sup>th</sup> February 2023 and this notice indicated that the earliest date on which an application to the Tribunal would be made was 22<sup>nd</sup> May 2023.

19. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Moray council in relation to this tenancy on 24<sup>th</sup> May 2023.

20. The Applicant is the owner of the property, the only property he rents out and is entitled to sell it.

21. The Applicant can no longer afford to rent out the property as mortgage payments made by him have increased and are not covered by the rent paid in terms of the tenancy agreement.

22. The Applicant intends to sell the property at market value at the earliest opportunity and entered into an estate agency agreement to market the property for sale in February 2023.

23. The Respondents do not oppose an eviction order and are seeking to be rehoused in appropriate social housing in the same area and intend to leave the property at some stage.

### **Reasons for Decision**

24. The Tribunal was satisfied that a Notice Leave in proper form and giving the correct notice period was sent to the Respondents in relation to this application and that appropriate notice had been given to the local authority. The Tribunal was also satisfied that the eviction ground had been made out. As far as reasonableness is concerned the Tribunal noted that the Applicant can no longer afford to rent out the property as the rent does not cover his mortgage. The Respondents have yet to secure suitable alternative accommodation for them and their family but are seeking such accommodation and do not oppose an order being granted and intend to leave the

property at some stage. In all of the circumstances before the Tribunal it appeared reasonable to grant an eviction order.

### **Outcome**

The Tribunal determined that an eviction order be granted in terms of Ground 1 of Schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant is entitled to sell the let property, intends to sell the let property for market value or at least put it up for sale within three months of the tenants ceasing to occupy it and it is reasonable on account of these facts to grant the eviction 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.**

Valerie Bremner

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**Legal Member/Chair**

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**Date** 17.11.23