

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/23/2979

Re: Property at Flat 2-1, 2 Gavinburn Street, Old Kilpatrick, G60 5JN (“the Property”)

Parties:

Mrs Elizabeth Campbell, Braeside, Roman Road, Clydebank, G81 6BT (“the Applicant”)

Mr William McQuade, Flat 2-1, 2 Gavinburn Street, Old Kilpatrick, G60 5JN (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application dated 29 August 2023, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2026. The Ground relied on was Ground 1 of Schedule 3 to the Act, namely that the landlord intends to sell the Property.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 9 August 2019, a Notice to Leave dated 2 June 2023 advising the Respondent that an application to the Tribunal under Ground 1 would not be made before 28 August 2023, and a letter from the letting agents, Source Property (Scotland) Limited, Clydebank, confirming that the Applicant has instructed them to act as selling agents.

3. On 14 December 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 4 January 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 8 February 2024. The Applicant was represented by Mr Kris Brown of Source Property (Scotland) Clydebank. The Respondent was not present or represented.
5. The Tribunal told the Respondents that it was satisfied that the requirements for a Ground 1 application had been met and that the issue for the Tribunal to determine was whether, in all the circumstances, it would be reasonable to issue an Eviction Order.
6. The Applicant's representative told the Tribunal that the Applicant and her husband, the joint owner of the Property are both retired and, with the help of a mortgage, they purchased the Property as part of their retirement planning, but one of them has since had heart treatment and the other now requires to have major surgery to replace both knees and, with an estimated waiting time of 2 years, has decided to have the surgery carried out privately. Accordingly, they need to sell the Property. They do not own any other rental properties. The Respondent is single and, so far as the Applicant's representative is aware, lives in the Property on his own, is in employment and has no mobility or vulnerability issues. He has been a good tenant.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
8. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and 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, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

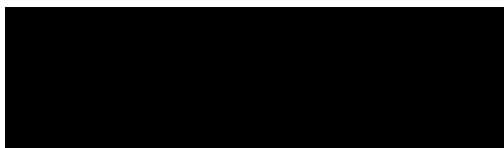
9. The Tribunal was satisfied from the evidence provided by the letting agents that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
10. The Tribunal noted the reason given by the Applicant for wishing to sell the Property, namely the requirement to fund surgery, which would not have been foreseen when the tenancy began. The Respondent had not provided the Tribunal with any evidence relating to his personal circumstances that he would wish the Tribunal to consider in arriving at its Decision and it did not appear that he had any vulnerability issues or dependants living with him.
11. Accordingly, having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order.
12. The Tribunal's Decision is affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

8 February 2024
Date

