



**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/23/3541**

**Re: Property at 10 Ferguson Way, Airdrie, North Lanarkshire, ML6 6EY (“the Property”)**

**Parties:**

**Gillies properties, 132 St John's Road, Edinburgh, EH12 8AX (“the Applicants”)**

**Miss Sharrona McSmythe, 10 Ferguson Way, Airdrie, North Lanarkshire, ML6 6EY (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined (i) that an eviction order should be granted under ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016, (ii) on the Respondent’s motion, that extract of the eviction order should be superseded to 26 July 2024, and (iii) that the Private Residential Tenancy between the parties shall terminate on 26 July 2024.**

**Statement of Reasons**

- 1. This Application called for its Case Management Discussion by teleconference call on 26 January 2024. The Applicants were represented by Mr Clark. The Respondent was present on the call.**
- 2. In this Application the Applicants seek an eviction order. They rely on Ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), which is that they intend to sell the Property.**

### Submissions for the Applicant

3. Mr Clark advised the Tribunal that the Applicants are liquidating their entire property portfolio. The Applicants' portfolio comprised approximately forty properties, of which around a dozen had already been sold. A further half dozen or so were currently going through an eviction process.
4. Mr Clark advised that the Applicants were in their mid-sixties and looking to end their residential letting operations. He advised that the Applicants had been "stung" by recent mortgage rate increases and rent capping, such that a fair portion of their portfolio was currently loss making; albeit, not the Property at the centre of this Application.
5. The Applicants wished to realise their capital assets to alleviate current financial concerns, and that process was currently ongoing. The process had involved prioritising properties in the portfolio where the mortgage payments outweighed the rent being received, as well as other specific properties that the Applicants wished to realise the value in. The Property in this case fell into the latter category.
6. Mr Clark expressed sympathy with the Respondent's situation. He described her as a very good tenant who pays her rent and keeps the Property clean and tidy. He noted that he understood the Respondent to be open to moving, subject to finding a property that meets her needs in Edinburgh, as opposed to Airdrie. He said that he had spoken to the Respondent on a number of occasions, and understood that she had already packed up. The issue was that the Respondent had been unable to identify a property that met her needs.
7. In respect of a request by the Respondent, if the eviction order was granted, to be given additional time to find suitable accommodation, Mr Clark helpfully indicated that the Applicants were agreeable to the Respondent being afforded some additional time to find suitable accommodation.

### Submissions for the Respondent

8. The Respondent did not dispute anything that Mr Clark had said. She accepted that the Applicants intend to sell the Property, and seemed to accept that it would be appropriate for her to move out. She spoke of having some difficulties getting around the Property due to her mobility issues, and of her support network of friends and family being principally located in Edinburgh.
9. The Respondent spoke of her own significant health issues, including in particular that she had brain damage following two surgeries on her brain, one of which had led to a stroke. She suffers from anxiety and panic attacks. She is a wheelchair user. She has issues with her sight. This is not an exclusive list of the health issues affecting the Respondent, but gives a clear indication of the reasons why she has had difficulty finding suitable accommodation.

10. The Respondent has spoken with an advice agency about these proceedings, but not sought their assistance with housing generally. She expects that being put into homeless accommodation will cause her further anxiety and lead to panic attacks. She has been in contact with Edindex about housing, but finds it difficult to deal with them because contact must be by email.
11. The Respondent is anxious about being made homeless, and in particular about the prospect of being housed with other homeless people. That being said, she was open to moving, and considered that having an eviction order granted may accelerate her ability to find alternative housing. To her mind, she would require some additional time than the normal enforcement period to find housing that met her complex needs.
12. As regards the Property, she had placed a wooden ramp leading up to her front door but she described that as being capable of removal without difficulty. Beyond that, the Property had not been adapted for her needs. She does not access any local specialist services.

### Discussion

13. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal may do anything at a Case Management Discussion that it can do at a Hearing, including make a Decision. In terms of Rule 2, when making a decision, the Tribunal needs to have regard to the overriding objective to deal with proceedings justly.
14. In terms of section 51 of the 2016 Act:-

#### *“51 First-tier Tribunal's power to issue an eviction order*

(1) The First-tier 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may [...] find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”

15. In terms of paragraph 1 of Schedule 3 to the 2016 Act, Ground 1 for eviction is in the following terms:-

“1 Landlord intends to sell

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

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

(1) applies if the landlord—

(a) is entitled to sell the let property,

(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, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(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.”

16. In assessing reasonableness, the Tribunal has had regard to the decision in *Barclay v Hannah*, 1947 S.C.245. In discussing a different statutory regime which nonetheless prohibited the court from granting an eviction order unless it was reasonable to do so, Lord Moncrief said:-

*“It is expressly enacted... that an order for the ejection of a tenant such as is here applied for is not to be made unless the Court considers it reasonable to make such an order. That enactment thus charges the Court with a judicial duty to consider the whole of the circumstances in which the application is made. The power of the Court to pronounce any such order is thus only a discretionary, and is moreover only a limited, power.”*

### Decision

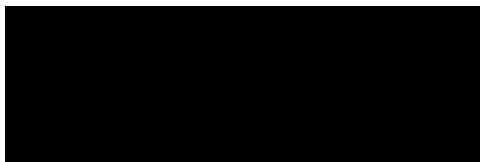
17. Having heard submissions, and identified that neither party disputed what the other was saying, the Tribunal was satisfied that it was unnecessary to fix a Hearing. That would only serve to prolong the matter without any good reason. There was no substantive dispute between the Parties.
18. The Respondent accepts that the Applicants intend to sell. The only questions for determination were whether (i) it was reasonable to grant the order, and, if so, (ii) whether the order should be superseded (which is to say, enforcement delayed to a future date) to allow the Respondent additional time to source suitable accommodation, per the Respondent’s request.
19. In respect of the first issue, the Tribunal is satisfied, having had regard to all of the circumstances to which it was directed, that it is reasonable to grant the eviction order. The Applicants are going through a process of removing themselves from the private letting market. They wish to alleviate financial concerns, and generally retire from this arena. There is nothing of import which ties the Respondent to this Property in such a way as, in all of the circumstances, would make it unreasonable to grant the order. In particular, the Property has no special features to assist the Respondent, and the

Respondent's entire support network is based in Edinburgh. The only matter that would tend to suggest that it would not be reasonable to grant the order is the lack of available alternative housing that meets the Respondent's needs. However, the Tribunal concluded that concerns about such availability could be overcome by allowing the Respondent additional time before enforcement of an eviction order.

20. As regards the allowance of additional time, the Tribunal was persuaded that it was reasonable to supersede extract of the eviction order. The Respondent has very complex needs tied to her medical conditions. It is appropriate that she be given additional time to find housing that is, in particular, wheelchair accessible and proximate to her support network. In the meantime, given that (i) the Property is not one of the properties that is causing financial difficulty to the Applicants, (ii) the Respondent has been, and continues to be, a good tenant in terms of meeting her tenancy obligations, and (iii) the Applicants are actively selling other properties in their portfolio to alleviate financial concerns, the Tribunal does not consider that the Applicants will suffer any material detriment by allowing the Respondent additional time.
21. For all of those reasons, the Tribunal unanimously determined that the eviction order should be granted, but that extract should be superseded by six months to 26 July 2024.
22. For the purposes of section 51(4) of the 2016 Act, the Tribunal determined that the Private Residential Tenancy between the Parties will terminate on 26 July 2024.

### **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.**



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**Legal Member/Chair**

26 January 2024

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**Date**