



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/2536

Re: 42B Main Street, Prestwick, KA9 1NX ("the Property")

Parties:

Steven Smart residing at 43 Caerlaverock Avenue, Prestwick, KA9 1HS ("the Applicant")

Kirsten Davidson residing at 42B Main Street, Prestwick, KA9 1NX ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member) Ashan Khan (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 17th July 2023. The application states that the grounds for eviction are as follows:

The Tenant was served three months notice to leave on the basis that the Landlord intends to sell, however the tenant was due out on 28th June 2023 but to date she has refused to leave. Ground One.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 17th and 18th February 2021. The commencement date of the tenancy was 15th July 2020..
- Notice to Leave dated 28th March 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 28th June 2023 and the ground of eviction is that the Landlord intends to sell the Property.
- Certificate of Service by David Orr, Sheriff Officer dated 30th March 2023 confirming that Notice to Leave was served on the Respondent on 30th March 2023.
- A letter from Lomond Estate Agents dated 28th August 2023 to Mr S Smart confirming the estimated value of the Property and the fees for marketing the Property.
- Section 11 Notice.
- Email to Housing Options Team at South Ayrshire Council dated 28th August 2023 sending a copy of the section 11 notice.

2. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 19th January 2024.

The Applicant attended the CMD.

The Respondent did not attend the CMD.

2.1 The Respondent did not attend and was not represented. She had been notified of the CMD by Chelsea Murray, Sheriff Officer on 24th November 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

2.2 Mr Smart explained that his circumstances have changed since he purchased the Property as he is now retired but does not receive any pension and his income is consequently reduced. He has an interest only mortgage over the Property and he needs to sell the Property as he has insufficient income to meet the costs involved with the Property. He has no option but to sell the Property. He has kept Lomond Estate Agents advised as to the position regarding his proposed sale of the Property and once the eviction order is issued he will be in a position to start the process involved in selling the Property. At the start of the lease the Property was in a first class condition. However, the condition of the Property has deteriorated during this tenancy and it will take a number of weeks to bring the Property up to standard so it can be put on the market. He wants to market the Property as soon as he can. He confirmed that the rent payments are up to date. The rent has recently been paid by the Respondent's mother who is guarantor under the lease. He confirmed that he owns other rental properties and intends to sell one a year over the next few years. He selected this Property first as it is the lowest value and has the highest mortgage. He considered it reasonable for the eviction to be granted as the Tenant has not maintained the Property in a good condition. For example, a leak occurred under the sink and she had placed a bucket to catch the drips but did not empty the bucket with the result that it over flowed and caused water damage. He inspected the Property about a year ago and was concerned about the condition of the Property. He asked

the Respondent to put the Property into a good condition but when he reinspected the Property four months later it was in a worse condition.

3. Decision.

3.1 The Tribunal made the following findings in fact:

3.1.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 15th July 2020.

3.1.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.1.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate AYR97788. Section B of the Land Certificate confirmed that the Applicant is heritable proprietor of the Property. He is entitled to sell the Property.

3.1.4 The Notice to Leave was served on the Respondent by Sheriff Officer on 29th March 2023 and advised the Respondent that an application would not be made to the Tribunal before 28th June 2023.

3.1.5 The Notice to Leave advised the Respondent that the Applicant intended sell the Property.

3.1.6 The section 11 notice was sent to South Ayrshire Council by email on 28th August 2023.

3.1.7 The Applicant intends to put the Property up for sale within three months of the Respondent ceasing to occupy the Property.

3.2 Requirements of Section 109 of the Procedure Rules.

3.2.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application that is being relied on by the Applicant is the ground that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

3.2.2 The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The letter from Lomond Estate Agents in respect of the sale of 42B Main Street, Prestwick, KA9 1NX dated 28th August 2023 together with the Landlord's oral representations were sufficient in their terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 28th March 2023 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 28th June 2023.

The Tenancy commenced on 15th July 2020. As at 28th March 2023 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months. The application for eviction was based on Ground 1 of Schedule 1 of the 2016 Act and therefore eighty four days notice was required.

The Landlord served the Notice to Leave on the Tenant on 30th March 2023 and correctly gave the Tenant a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

A copy of the section 11 notice had been provided.

3.2.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 109(c) of the Procedure Rules.

3.3 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 as the documents and evidence detailed at paragraph 3.2.2 (i) hereof are sufficient evidence that the Applicant intends to sell the Property

3.4 The Tribunal considered the Applicant's representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right

to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

3.5 The Tribunal weighed the respective positions of the parties. They found that it was reasonable for the eviction order to be granted due to the Applicant's financial position which means that he need to sell the Property and the Respondent has not provided any representations.

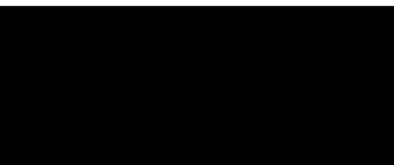
3.6 Accordingly, the Tribunal found in law that the ground One in Schedule 3 of the 2016 Act was met.

3.7 The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the Notice to Leave was served on the Respondent after 6th September 2022 and the application was received by the Tribunal after 28th October 2022.

3.8 Consequently the Tribunal determined that the order for possession of the Property be granted as Ground 1 of Schedule 3 of the 2016 Act had been met.

4. 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.



**Jacqui Taylor
Legal Member**

19th January 2024