



**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/23/3864**

**Re: Property at 35 A Queen Street, Carnoustie, Angus, DD7 7AX (“the Property”)**

**Parties:**

**Mr Scott McCreadie, 16 Clonard Close, Dublin, Dublin 16, Ireland (“the Applicant”)**

**Rent Locally Tayside and Fife, Unit 2, Gemini Crescent, Lindsay Court Technology Park, Dundee, DD2 1SW (“the Applicant’s Representative”)**

**Ms Siobhan Mitchell, 35 A Queen Street, Carnoustie, Angus, DD7 7AX (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Sandra Brydon (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of eviction be granted against the Respondent.**

**Background**

1. On 1 November 2023, the Applicant submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 29 January 2024, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by teleconference on 8 April 2024.

**The case management discussion**

4. The Applicant was in attendance and was represented by Mrs Laura Wheelan of the Applicant’s Representative.

5. The Respondent was present.

### **Preliminary Matters**

6. The Legal Member explained the purpose of a case management discussion.
7. It was noted that the Applicant had telephoned from Dublin. It was explained to him that the tribunal could not hear evidence from him because he was outwith the United Kingdom and, should a Hearing be required, certain steps would require to be put in place to facilitate the taking of his evidence.
8. Mrs Wheelan said that an order of eviction was sought because the Applicant wanted to sell the Property.
9. Ms Mitchell said that she was in agreement to the order of eviction being granted and that she wanted to leave the Property. She said that the local authority would not entertain her application for housing unless an order of eviction had been granted.

### **10. Findings in Fact**

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 6 December 2019.
- (ii) The monthly rent currently due under the private residential tenancy is £618.
- (iii) The Applicant had served a notice to leave requiring the Respondent to vacate the Property by 28 October 2023.
- (iv) The Respondent continues to reside in the Property.
- (v) The appropriate intimation had been made to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

### **11. Findings in Fact and Law**

- (i) The Applicant intends to sell the Property.
- (ii) It is reasonable to grant the order of eviction

### **12. Documents before Tribunal**

- (i) Private residential tenancy agreement dated 6 December 2019.
- (ii) Copy Notice to Leave dated 3 August 2023.
- (iii) Copy Section 11 intimation to the local authority dated 6 November 2023.
- (iv) Title Sheet for the Property ANG6478.
- (v) Home Report for the Property dated 15 September 2023.
- (vi) Copy of email from Mortgage Managers Ltd to the Applicant dated 1 November 2023.
- (vii) Copy of email from 1<sup>st</sup> Seed Properties to the Applicant dated 28 November 2023.

### **13. The Law**

#### ***Section 51 of the 2016 Act as amended:***

(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.*

### **Ground 1, Part 1 of Schedule 3 of the 2016 Act (as amended)**

#### **Let property required for another purpose**

##### **Landlord intends to sell**

1(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.*

#### **Discussion**

14. Mrs Wheelan was able to provide information in relation to the Applicant's desire to sell the Property and the steps taken to advance this. The Applicant did not provide evidence but was able to provide clarification on some issues.

15. The Property had been the Applicant's family home until he had moved to Ireland in May 2018. Thereafter the Property had been on the market until the Respondent became a tenant in December 2019. Mrs Wheelan said that the Applicant had a mortgage with Halifax but, because, he was now living outwith the United Kingdom, was limited in the type of mortgage which he could get for the Property when his historic consent to let mortgage reached the end of its term. She said that the current mortgage rate was 8.74%. She referred to the email from Mortgage Managers dated 1 November 2023 which set out the mortgage position.
16. Mrs Wheelan said that the costs paid by the Applicant exceeded the rental income and Mr McCreadie said that he has to pay £330 per month more than the rental income to maintain the mortgage payments and other costs such as insurance, management fees and gas maintenance charges.
17. Mrs Wheelan referred to the Home Report and the email from 1<sup>st</sup> Seed Properties. She said that this company had agreed to purchase the Property at a price of £105000 and would do so when vacant possession was achieved. She said that this supported the ground that the Applicant intended to sell the Property.
18. Ms Mitchell said that she resided in the Property with her children aged five and twelve who are schooled locally. She said that the Council officer she had spoken to about housing had been supportive when she explained that she would require to be housed locally so that the children would not require to move schools and also to facilitate the co-parenting arrangements which were in place for one of the children.
19. Ms Mitchell said that she was in receipt of disability benefit but that the Property had no special adaptations. She said that she was on a career break which had lasted five years and would probably soon resign from her job as her health had deteriorated. She stressed that she accepted that it was time for her to move on from the Property.
20. The Applicant provided clarification on his personal circumstances. He owns a property in Dublin which he occupies with his wife and child. Another child is expected in weeks. The Irish property is mortgaged.

### **Reasons for Decision**

21. The tribunal saw no reason for determination of the application to be continued to a Hearing. It considered that it had all the necessary information to determine the application.
22. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003.

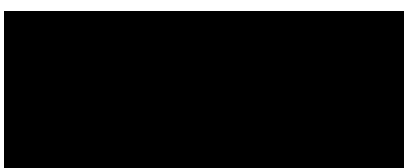
23. The tribunal considered that it required to take a two stage approach to the application. It required to first determine if there was sufficient evidence to support the ground that the Applicant intended to sell the Property and then, if the ground was met, it was reasonable to grant the order of eviction.
24. The tribunal accepted that there was convincing evidence that the Applicant intended to sell the Property. This consisted of the home Report, the email from the company intending to purchase the Property and the email from the mortgage company. The tribunal accepted that the financial situation of the Applicant in relation to the mortgage issues also provided compelling evidence of the Applicant's intention to sell the Property.
25. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness, a balancing exercise requires to be undertaken.
26. The tribunal had regard to what had been stated by the Respondent. She accepts that it is time to move from the Property. She did not express any concerns that her family life would be significantly disrupted were she to be evicted from the Property
27. The tribunal considered that it was reasonable for a landlord to sell a property in circumstances where continued ownership of it was costing that landlord significant sums. In this particular case, the Applicant found himself in particular difficulties because of his mortgage situation and the costs of continuing to own the Property.
28. In the particular circumstances of this application the tribunal determined that it is reasonable for the Applicant to recover the Property.

### **Decision**

29. The tribunal determined that the application be granted and that an eviction order be made.

### **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  
8 April 2024**