



**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) 2016**

**Chamber Ref: FTS/HPC/EV/23/1748**

**Re: Property at 1 Flat 4 Paterson Place, Haddington, EH41 3DU (“the Property”)**

**Parties:**

**Ellerton Properties, 4 Vetch Park, Haddington, EH41 3LH (“the Applicant”)**

**Miss Rachel McKinley, 1 Flat 4, Paterson Place, Haddington, EH41 3DU (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Janine Green (Ordinary Member)**

**Decision**

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

**Background**

1. An application was lodged dated 30 May 2023 in terms of Rule 109 of the Chamber Rules being an application for a private residential tenancy eviction order.
2. Along with the application form, the Applicant’s agents lodged the following documents:
  - Copy of the tenancy agreement
  - Copy of the rent ledger
  - Copy Notice to Leave
  - Copy section 11 Notice
  - Copy email from East Lothian Council
3. The Tribunal wrote to the Applicant’s agents on 20 June 2023 requesting evidence of service of the Notice to Leave on the tenant and documentary evidence demonstrating that the ground of eviction is established. Examples

were provided of a copy of a letter of engagement with a solicitor or estate agent instructed in the proposed sale or a copy of a home report. This information was requested by 4 July 2023.

4. The Applicant's agents replied by email of 26 June 2023 with a copy of a Property Sales Quotation from a firm of solicitors and a copy of email correspondence with the tenant.
5. The Tribunal contacted the Applicant's agent again on 4 July 2023 asking again for proof of service of the Notice to Leave on the tenant and asked for this by 18 July 2023.
6. The Applicant's agent replied by email of 4 July with a copy of the proof of posting of the Notice to Leave.
7. The application was accepted and assigned to a case management discussion on 13 October 2023.
8. Notice of the application and details of the case management discussion was served on the Respondent.
9. The Respondent was asked to provide written representations by 26 September 2023. No written representations were received.
10. On 10 October 2023 the Applicant's agents requested a postponement of the case management discussion as the member of staff involved was no longer granted. The postponement was granted by the Tribunal. The case management discussion was rescheduled for 12 January 2024.
11. Details of the case management discussion were sent to the Respondent by recorded delivery mail on 22 November 2023.

#### Case Management Discussion

12. The case management discussion took place on 12 January 2024 by teleconference. Charlotte Gray, Director, Professional Property Letting, attended on behalf of the Applicant and the Respondent attended on her own behalf. It should be noted that the Respondent was in the process of losing her voice and it was, therefore, difficult sometimes to understand her position on matters.
13. It was the Applicant's position that the notice to leave had been served correctly and given enough notice to the Respondent. On questioning by the Tribunal, the Applicant's representative advised that she had been in email contact with the Tribunal about the issue of dates on the Notice to Leave. She advised initially that she couldn't confirm when the Notice to Leave was served on the Respondent but then said there was an email effecting service on the Respondent on 3 March 2023 and an email in response from Respondent dated 8 March 2023.

14. In regards to the question of whether it was reasonable for the Tribunal to grant an eviction order in this case, the Applicant's representative advised that the Property was owned by a company called Ellerton Properties. Judith Warren was the sole director of the company. She required to sell the Property to provide funds for her retirement. She had owned another Property at the same stair, Flat 2, and this had been sold approximately last September. The company owned other assets but it had only owned the two properties. The Applicant's representative was unable to provide any further information on the Applicant's financial position including whether she had access to pension funds and how much she had received on the sale of Flat 2.

15. In respect of the Respondent, she advised that she had taken the tenancy of the Property on the basis it would be long-term. She lived there with her 13 year old daughter. She was employed part-time as a classroom assistant at Haddington Primary School which was just round the corner. She did not drive. The Respondent had been looking at other properties but they were all too expensive. She shared residence of her 13 year old daughter with her ex partner and they were on good terms. The Tribunal was unable to make out the name of the school that the Respondent's daughter currently attended due to the Respondent losing her voice. The Tribunal understood that the Respondent's daughter was due to move school shortly to Kirkcaldy High School. Her daughter's best friend stayed close by. Residence was shared between the Respondent and her ex partner on an alternative four nightly basis. The Respondent was unable to discuss her health problems at the case management discussion but, on invitation by the Tribunal to do so, offered to provide a written statement in this regard.

16. After the Case Management Discussion the Tribunal issued a Case Management Discussion Note and a Notice of Direction addressed to both parties. The Notice of Direction required the Applicant to provide:

- *“Details of service of the Notice to leave including, but not restricted to a copy of the attachments to the email sent to the Respondent on 3 March 2023; copies of correspondence with the Tribunal in respect of date of service of the Notice to Leave/dates included on Notice to Leave;*
- *Any further evidence of the Applicant's intention to sell the Property;*
- *Details of the proceeds of the sale of Flat 2 at the same address as the Property and the date those sale proceeds were received.*
- *Details of the sole director, Judith Warren's financial circumstances including, but not restricted to, details of any pension income currently or soon to be received.”*

17. The Notice of Direction required the Respondent to provide:

- *“Due to the fact that the Tribunal could not hear some of the Respondent's submissions due to her losing her voice at the case*

*management discussion, confirmation of the school that the Respondent's daughter attended at the time of the case management discussion.*

- *If the Respondent wishes the Tribunal to take account of any medical conditions or impairment suffered by the Respondent when considering the reasonableness or otherwise of granting the eviction order, written details of that medical condition or impairment;*
- *If the Respondent believes that it would be useful for the Tribunal to hear from her daughter, and believes her daughter to understand what the Tribunal are wanting to hear about and why, then a written statement from her daughter detailing the likely effects of the Tribunal granting an eviction order for her;*
- *A note of any witnesses that the Respondent believes would provide evidence on the likely effects of granting an eviction order for her."*

18. The documents in relation to the Notice of Direction were to be lodged no later than 28 days before today's hearing.

19. By email dated 25 January 2024 the Applicant's agent provided further information including proof of service of the Notice to Leave by email on 3 March 2023, a written statement from the Applicant's sole director confirming the reasons for the intention to sell the Property. It also confirmed that, due to a misunderstanding, the property at Flat 2 1 Paterson Place had not, in fact, been sold. It had required to be re-let on a temporary basis for a number of reasons but the Applicant intended to sell this property too. A further email was sent to the Tribunal by Applicant's agents on 15 April enclosing a letter from Anderson Strathern, solicitors, in connection with the potential sale of the Property.

20. The Respondent emailed the Tribunal on 29 January 2024 on receipt of the Applicant's submissions to dispute some of what was said in the Applicant's director's statement. She also advised that "*I actually suffer from depression and I am a terrible sleeper and this is causing me stress and anxiety. My daughter does stay with her Dad a lot as I have been struggling the last year or so but she still stays with me! I've been off work recently partly due to this stress. I am only in part time work and missing days.*"

### The Hearing

21. The Hearing took place on 19 April 2024 by teleconference. Ms Gray again attended on behalf of the Applicant. The Applicant's sole director did not attend. Ms Mckinley attended herself.

22. A discussion took place in relation to the Notice to Leave and the relevant dates. The Tribunal advised that, having now seen the proof of service of the Notice to Leave by email dated 3 March 2023 and the Respondent not disputing this, the date noted as being the earliest date for the raising of proceedings appeared to be a day later than it should be in terms of the 2016 Act. Ms Gray, on revisiting the matter, agreed with this but advised that this was an error and that tribunal proceedings hadn't in fact been commenced until 30 May 2023.
23. The Applicant's representative then addressed the issue of Judith Warren's entitlement to sell the Property. As sole director of Ellerton Properties, as advised in the written statement, she would be entitled to sell. Ms Gray had no further information on this particular matter but understood that it was Mrs Warren's intention to sell the whole business to enable her to retire.
24. Ms Gray further submitted that the letter from Garden Burnett and Stirling (undated) along with the letter from Anderson Strathern, solicitors, dated 4 April 2024 was enough to demonstrate the Applicant's intention to sell the Property.
25. In relation to other factors pointing to the reasonableness of the eviction order the Applicant's representative reiterated the terms of Mrs Warren's written statement. She was 76 years of age and wanted to retire. Her husband was in poor health and was age 86. She had a small pre-self employment monthly pension of £35 per month and state pension. She did not draw a salary. The Applicant owned one other Property being Flat 4 at 1 Paterson Place. This had been vacated and put up for sale last year but, due to a number of issues, had required to be re-let on a temporary basis. It was her intention to sell both Properties.
26. In relation to factors in favour of the eviction order not being granted, the Respondent advised that she had been trying to find alternative accommodation but had been unsuccessful in securing about 8 or 9 properties. Her budget meant that many of the properties were too expensive, She only wanted to live in Haddington and was not looking at nearby places to stay. She had now left her job at Haddington Primary School as it had been on a temporary contract. Her GP notes would probably refer to depression and anxiety and she had been prescribed treatment but was stubborn. Her daughter now resided with her ex partner and was attending Kirkcaldy High School. This was going well. She is 13 years old and sees her mum at weekends and holidays. The Respondent is due to start a course for one day a week in order to be a learning assistant. She did not know whether this would be online or in person. If in person, she would require to go to Musselburgh one day a week. There were bus links. The Respondent does not drive. She

was unable to give details of any social activities or clubs she was involved in in Haddington. The Respondent was in receipt of Universal Credit and was currently topping up Universal Credit rent payments to meet monthly rent payments. Her budget was about £930 per month. Her grandad had died and she was expecting some inheritance but could not say how much or when it would be received. She was hoping to get enough money to pay off rent arrears and then have a holiday with her daughter. She would be homeless if the eviction order were granted. She had family locally but would not want to stay on their sofas.

### Findings in Fact

The Tribunal made the following findings in fact:

1. The parties entered into a private residential tenancy agreement in terms of the Private Residential Tenancies (Scotland) Act 2016 (“the 2016 Act”) from 14 June 2022.
2. The Applicant is landlord of the Property. The Tribunal had a copy of the Applicant’s title deeds being Land Certificate 1027489/210/12041. Section B of the Land Certificate confirms that the Applicant is heritable proprietor of the Property. The Applicant is entitled to sell the Property.
3. Under the terms of the tenancy rent was due to be paid initially in the sum of £895 per month but this had increased by 3% to £921.85 from 1 October 2023.
4. A Notice to Leave had been served on the Respondent by email on 3<sup>rd</sup> March 2023.
5. The Notice to Leave stated that proceedings would not be raised before 28 May 2023 when in fact the date should have been 27 May 2023.
6. The Notice to Leave stated that the Landlord wanted to sell the Property.
7. The section 11 notice was sent to East Lothian council on 30 May 2023.
8. The Applicant intends to put the Property up for sale within three months of the Respondent ceasing to occupy the Property.
9. The Tribunal determined 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 Landlord;
  - (ii) The name and address of the Landlord’s representative;
  - (iii) The name and address of the tenant;
  - (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 accepts that this is ground 1 of schedule 3 of the 2016 Act
10. The Applicant requires to sell the Property as its sole director wishes to retire. The Applicant’s sole director is 76 years of age.
11. The Applicant’s sole director’s husband is 86 years of age and is not in great health.
12. The Applicant’s sole director requires to sell the business including the Property in order to access retirement funds.
13. The Applicant’s sole director also intends to sell the neighbouring flat which is owned by the applicant.
14. The Respondent is a single mum.

15. Until March the Respondent worked as a classroom assistant at Haddington Primary School. It was a temporary contract.
16. If the eviction order is granted the Respondent will be homeless.
17. The Respondent's daughter is 13 years of age. She has moved to Kirkcaldy High School recently and has settled in well. She resides with the Respondent's ex partner now but stays with the Respondent during holidays and at weekends.
18. The Respondent is enrolled to start a part time college course to become a classroom assistant. She doesn't know if this will take place online or in-person. If in-person, she will be required to go to Musselburgh. This will be one day a week.
19. The Respondent suffers depression and anxiety and this will be detailed in her medical records.
20. The Respondent had family in the area but does not want to stay on their sofas.
21. The Respondent had lived in Haddington for many years from the start of High School.
22. The Respondent has been looking for an alternative place to stay but she has restricted her search to Haddington. She does not want to live elsewhere. She has bid on 8 or 9 properties in total. She has a budget of approximately £930 a month and wants a 2 bedroom property.
23. The Respondent was unable to say whether Universal Credit will require her to seek a job as well as her college course.

### Reasons for Decision

24. The Tribunal took into account all the written documents and written submissions before it. It also took into account the oral submissions of the parties. The Tribunal took into account the provisions of the 2016 Act and the Procedure Rules. The Tribunal requires to take into account all relevant factors before deciding on the reasonableness of granting an order for recovery and possession.
25. In relation to the error in the Notice to Leave in the day stated as being the earliest date on which proceedings could be raised being a day later than it should have been, the Tribunal decided that section 73 of the 2016 Act concerning minor errors in documents should apply and that the Notice to Leave was not invalid as the error did not materially affect the effect of the document.
26. The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 in matters to consider when determining reasonableness:

*'I 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.'*

27. The Tribunal found that, while the relevant factors, taken as a whole, were finely balanced, the balance of reasonableness fell in favour of the Applicant in the present circumstances. The Applicant's sole director wishes to retire. She is now 76 years of age and her husband is 86 and in ill health. The Respondent's daughter is now residing with her father most of the time and an eviction order will not impact on her ability to keep attending Kirkcaldy High School. The Respondent's employment locally has ended and she is due to commence a part-time college course but is unable to say whether this will require her to physically attend college or undertake online learning. In the circumstances before it and on the evidence available, the decision to grant the order for recovery and possession of the Property is a reasonable one.

#### Decision

The application for an order for recovery and possession of the Property be granted in favour of the Applicant.

#### **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.**



22 April 2024

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**Legal Member/Chair**

\_\_\_\_\_  
**Date**