



**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/23/3867**

**Re: Property at 42 Lochinver Crescent, Paisley, PA2 9HA (“the Property”)**

**Parties:**

**Ms Karan Thomas, 4 Larmoth Avenue, Manchester, M21 7LN (“the Applicant”)**

**Mr Gary Borland, 42 Lochinver Crescent, Paisley, PA2 9HA (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. On 1<sup>st</sup> November 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 15<sup>th</sup> August 2018 and a rent of £350 per month;
  - ii. Copy Notice to Leave dated 24<sup>th</sup> July 2023 with proof of service;
  - iii. Section 11 Notice and proof of service;
  - iv. Email dated 27<sup>th</sup> November 2023 from the Applicant to their agent instructing them to handle the sale.

3. The Application was served on the Respondent by Sheriff Officers on 6<sup>th</sup> March 2024.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mrs McLelland of Castle Residential Lettings. There was no attendance by the Respondent or any representative on his behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Mrs McLelland sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She said that the Applicant intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating it.
7. The Tribunal were satisfied that the ground had been established, and asked Mrs McLelland to address the Tribunal on reasonableness. Mrs McLelland said that the Applicant wished to sell the flat and retire. The flat had belonged previously to the Applicants mother, but she had now died, prompting the Applicant to make her decision. The flat is a one bedroomed property. The Respondent lives there alone, and has a dog. He is in his early thirties and in employment. Mrs McLelland said that her agency had tried to assist him with alternative housing, but did not have any properties in the area that he wished to live in. He is not present at the CMD today as he has an appointment with the Housing Department.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 15<sup>th</sup> August 2018;
- c. A Notice To Leave, dated 24<sup>th</sup> July 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 6<sup>th</sup> March 2024;
- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The property is a one bedroomed flat;
- h. The Respondent is a single man and is employment.

## Reasons for Decision

8. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

### **Private residential tenancies: discretionary eviction grounds**

*(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.*

*(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.*

*(3)In schedule 3 (eviction grounds)—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

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

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for “must” substitute “may”,*

*(ii)the words from “the landlord” to “3 months” become paragraph (a),*

*(iii)after paragraph (a) insert “, and*

*“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i) for “must” substitute “may”,*

*(ii) the words from “the landlord” to “home” become paragraph (a),*

*(iii) after paragraph (a) insert “, and*

*“(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f) in paragraph 7(2) (property required for religious purpose)—*

*(i) in the opening words, for “must” substitute “may”,*

*(ii) after paragraph (b), the word “and” is repealed,*

*(iii) after paragraph (c) insert “, and*

*“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g) in paragraph 8 (not an employee)—*

*(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,*

*(ii) for sub-paragraph (2)(c) substitute—*

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

*(iii) sub-paragraph (3) is repealed,*

*(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,*

*(h) in paragraph 10(2) (not occupying let property)—*

*(i) in the opening words, for “must” substitute “may”,*

*(ii) after paragraph (a), the word “and” is repealed,*

*(iii) after paragraph (b) insert “, and*

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

*(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,*

*(j) in paragraph 13(2) (criminal behaviour)—*

*(i) in the opening words, for “must” substitute “may”,*

*(ii) after paragraph (a), the word “and” is repealed,*

*(iii) after paragraph (b) insert “, and*

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

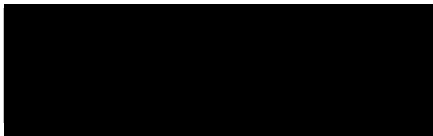
*(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—*

*“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.*

9. The Tribunal now has to decide if it is reasonable to grant the eviction order.
  
10. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the documents produced with the Application and the submissions made at the CMD by Mrs McLelland. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s reasons for wishing to sell, and noted that there had been no attempt by the Respondent to contact the Tribunal to object to the application, nor had he appeared at the CMD. From what Mrs Mcllland said the Respondent is taking steps to find alternative accommodation. The Tribunal considered in those circumstances that it was reasonable to grant the order.

### **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.**



**11<sup>th</sup> April 2024**

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**Legal Member/Chair**

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**Date**