



**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/23/4408**

**Re: Property at 2c ABBOT STREET, PERTH, PH2 0EB (“the Property”)**

**Parties:**

**RS KAREN FORBES and MR MARK FORBES, 91/7 Constitution Street, Edinburgh, EH6 7AY (“the Applicants”)**

**MR JOHN HAYBURN, 2c ABBOT STREET, PERTH, PH2 0EB (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

At the Case Management Discussion (“CMD”), which took place by telephone conference on 3 June 2024, the Applicants were not in attendance but were represented by Mrs Sally McCartney of Kippen Campbell LLP, Solicitors, Perth. The Respondent was present.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/23/4509.

Prior to the CMD the Tribunal had received from the Applicants’ representative written Submissions by email dated 29 May 2024.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-**

**Background**

The Tribunal noted the following background:-

- i. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 27 August 2020.
- ii. The rent payable in terms of the PRT is £500 per calendar month payable in advance on the 27<sup>th</sup> day of each month.

- iii. On 26 June 2023 the Applicants served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 21 September 2023 on the basis that the Applicants intend to sell the Property.
- iv. By letter dated 6 December 2023 the Applicants served on Perth & Kinross Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 which was issued by recorded delivery post.

### **The CMD**

At the CMD Mrs McCartney for the Applicants made the following representations in respect of this application and the associated application FTS/HPC/CV/23/4509:-

- i. The deposit previously paid by the Respondent in terms of the PRT is still held.
- ii. The Respondent remains in occupation of the Property.
- iii. The Property is a 2 bedroomed flat with hallway, lounge, kitchen and bathroom.
- iv. The Applicants previously owned and rented out 6 properties. They were all running at a loss. They had sold 4 of the properties at the time this application was made. One other property is on the market and the Property is the final one to be sold.
- v. In relation to the Property the Applicants are sustaining a loss of £4,700 per annum due to high mortgage interest rates and tax on rental income.
- vi. The loss is exacerbated by the Respondent not having paid rent since August 2023.
- vii. The mortgage over the Property is with Bristol & West.
- viii. The rent has never been increased.
- ix. The Applicants are not working so cannot refinance the Property.
- x. The only option open to the Applicants is to remove the Respondent and sell the Property.
- xi. The rent arrears balance as at the CMD is £4,589.04.
- xii. The Applicants seek an eviction order.

At the CMD the Respondent made the following representations in respect of this application and the associated application FTS/HPC/CV/23/4509:-

- i. The Respondent is almost 55 years of age and lives alone.
- ii. He lost his job last year and his health has gone downhill.
- iii. He became completely unemployed in August 2023. He had some redundancy money.
- iv. His credit rating is not good.
- v. He could not find anywhere else to live.
- vi. He applied to Perth & Kinross Council for housing. He made the Council aware of his health issues. Whilst initially told he would be eligible for housing he was quickly told he was not eligible due to the rent arrears accrued relative to his tenancy of the Property. He is "caught between a rock and a hard place".
- vii. He cannot find a private let.
- viii. The Respondent has asthma. The doctor has advised that his heart is also not working properly to get enough air into his lungs. He has mobility issues due to problems with his legs and he is on crutches. He does not get out much.
- ix. He has no objection to an eviction order being granted but has nowhere else to go.
- x. He accepts the rent arrears to have accrued to £4,589.04.
- xi. Under questioning from the tribunal about why he had not applied for housing benefit or other state benefits to which he might be entitled the Respondent said that he wanted to get himself back on his feet and didn't want to accept "handouts".

- xii. The Respondent's Mum has dementia and lives in a care home in Perth.

Mrs McCartney thereafter made further representations for the Applicants as follows:-

- i. The Respondent has had opportunities to get Government assistance relative to his rent but has chosen not to do so.
- ii. That decision has had a detrimental effect on the Respondent and also on the Applicants as no rent has been paid since August 2023.
- iii. The granting of an eviction order will assist the Respondent in securing alternative accommodation as the Council has an obligation to house him.

### **Findings in Fact**

- i. The Applicants leased the Property to the Respondent in terms of the PRT.
- ii. The PRT commenced on 27 August 2020.
- iii. The rent payable in terms of the PRT is £500 per calendar month payable in advance on the 27<sup>th</sup> day of each month.
- iv. The deposit previously paid by the Respondent in terms of the PRT is still held.
- v. The Property is a 2 bedroomed flat with hallway, lounge, kitchen and bathroom.
- vi. On 26 June 2023 the Applicants served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 21 September 2023 on the basis that the Applicants intend to sell the Property.
- vii. The Applicants previously owned and rented out 6 properties. They were all running at a loss. They had sold 4 of the properties at the time this application was made. One other property is on the market and the Property is the final one to be sold.
- viii. In relation to the Property the Applicants are sustaining a loss of £4,700 per annum due to high mortgage interest rates and tax on rental income.
- ix. The loss is exacerbated by the Respondent not having paid rent since August 2023.
- x. The mortgage over the Property is with Bristol & West.
- xi. The rent has never been increased.
- xii. The Applicants are not working so cannot refinance the Property.
- xiii. The only option open to the Applicants is to remove the Respondent and sell the Property.
- xiv. The rent arrears balance as at the CMD is £4,589.04.
- xv. The Respondent is almost 55 years of age and lives alone.
- xvi. He lost his job last year and his health has gone downhill.
- xvii. He became completely unemployed in August 2023.
- xviii. His credit rating is not good.
- xix. He has been unable to find anywhere else to live.
- xx. The Respondent has chosen not to apply for housing benefit or other state benefits to which he might be entitled.
- xxi. The Respondent remains in occupation of the Property.
- xxii. By letter dated 6 December 2023 the Applicants served on Perth & Kinross Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 which was issued by recorded delivery post.

### **Reasons for Decision**

The factual background is not in dispute between the parties.

The application proceeds upon ground 1 of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(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."*

The Applicants are entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietors thereof.

Sub-paragraph 2(b) requires that the Applicants intend to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a Sole Selling Rights Agreement with Clyde Property signed on 12 January 2024. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account:-

- i. That the Applicants are sustaining a loss of £4,700 per annum due to high mortgage interest rates and tax on rental income.
- ii. That since September 2023 the loss is exacerbated by the Respondent not having paid any rent such that the arrears are now £4,589.04.
- iii. That the Applicants cannot refinance the Property nor should they require to do so where the Respondent is substantially in arrears of rent.
- iv. That the Respondent has not applied for housing benefit or any other state benefits or housing support that might have been or might still be available to him following the loss of his employment.
- v. That the Respondent has made attempts to obtain local authority housing or another private let without success, the former being unsuccessful due to the arrears situation which he has allowed to accrue by electing not to claim housing benefit which he would have been eligible to receive.

The Tribunal considered it reasonable to grant an eviction order. It is unfortunate that the Respondent lost his employment. However, he has failed to engage in steps needed to claim the financial support available which would have ensured his rent was paid. On the basis that the Applicants are sustaining an ongoing financial loss in preserving the tenancy - made worse since August 2023 by the non-payment of rent - the Tribunal considered it reasonable to grant an eviction order.

## **Decision**

The Tribunal granted an eviction order in favour of the Applicants.

## **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.**

**Gillian Buchanan**

**Legal Member/Chair**

**3 June 2024**  
**Date**