



**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/23/4355**

**Re: Property at Flat 1-2, 103 Tantallon Road, Shawlands, Glasgow, G41 3BD (“the Property”)**

**Parties:**

**Mrs Irene Clark, 8 Glamis Avenue, Newton Mearns, Glasgow, G77 5NZ (“the Applicant”)**

**Mr David Ellingham, Flat 1-2, 103 Tantallon Road, Shawlands, Glasgow, G41 3BD (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

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

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

**Background**

1. On 5<sup>th</sup> December 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 26<sup>th</sup> August 2018 and a rent of £500 per month;
  - ii. Copy Notice to Leave dated 7<sup>th</sup> September 2023;
  - iii. Copy email dated 7<sup>th</sup> September 2023 to the Respondent serving the Notice to Leave;
  - iv. Section 11 Notice and proof of service;

- v. Copy letter from Rettie, Estate Agent dated 23<sup>rd</sup> November 2023.
3. The Application was served on the Respondent by Sheriff Officers on 22<sup>nd</sup> January 2024.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place on 22<sup>nd</sup> January 2024 by teleconference. The Applicant was not present, but was represented by Miss Harte of Northwood Letting Agents. The Respondent represented himself.
5. The Respondent sought a continuation, which was opposed by Miss Harte, to allow him to seek legal advice. He said he had made repeated attempts to meet with agencies which provide legal advice, but there was a lack of available appointments.
6. The Tribunal decided that it could not determine the reasonableness of granting the order sought in the absence of hearing evidence from both sides regarding their respective circumstances. It decided that it would need to hear more detailed evidence from the parties about their circumstances and the effect upon them if the Tribunal were to grant or refuse the order. The case was therefore adjourned for a Hearing to be fixed.

### **Subsequent to CMD**

7. On 15<sup>th</sup> April 2024 the Tribunal sent an email to each party advising of the date set for the Hearing.
8. On 17<sup>th</sup> May 2024, at 5.30pm, the Applicant’s agent sent an email to the Tribunal lodging documentation in relation to the Applicant’s costs, and a statement written by the Applicant.

### **Hearing**

9. The Hearing took place on 20<sup>th</sup> May 2024 by teleconference. The Applicant was present, and was represented by Miss Harte of Northwood Letting Agents. The Respondent represented himself.
10. The Tribunal asked Miss Harte why it should consider the late submission given that Rule 22 of the Tribunal’s Rules provides that documents should be lodged seven days prior to the Hearing. Miss Harte did not seem to know of the existence of the Rule as she said that the CMD Note had not put any time scale on lodging documents, and timescales had been issued in cases she had dealt with in the past. In any event she said that the Applicant intended to read out her statement as her evidence. On that basis the Tribunal allowed the late lodging. The documents were emailed to the Respondent.

11. The Applicant confirmed that she intends to sell or market for sale the property within three months of the Respondent vacating. She then went on to give her evidence. She said that she had had a serious illness in the past and that she is worried that the stress of this situation could bring it back. She said that she is 61 years old, her husband is 71 years old and they wish to retire and get out of the rental market. She said that there has been no rent increase in over nine years and she is effectively subsidising the Respondent as she has made a loss on the property in the previous year.
12. The Applicant said that there are significant capital costs coming up in relation to the property, which are, for that flat, at least £22,000. They wish to sell so that they do not incur these costs.
13. The Applicant said that she does have another rental flat, which makes a small profit, but it is her intention to sell it as well, either to the current tenant or on the open market when the tenant leaves.
14. The Applicant said she had two sons who rent in other parts of the UK. They are both finding it difficult and she wishes to use the sale proceeds of this flat to assist them, and for them to get the benefit while she is still alive.
15. The Applicant said that the rent is £500 per month, of which the letting agent pays her £430 per month. Her calculations are that she receives £5160 per annum in rent and pays £4320 per annum to the mortgage, £1050 per annum for common charges and with other expenses the outgoings are £5522 per annum. The property is a one bedroomed flat.
16. The Respondent gave evidence. He said that he lives alone and is currently in receipt of benefits. He was working but he said that there was an incident after he sent an email just before the Notice to Leave ran out to say that he was not leaving. He said that the Applicant attended at the property and there was an incident which he reported to the police. He said that he was prescribed anti-depressants after the incident, and he reacted badly to them. He is no longer on medication.
17. The Respondent said that he appreciates that he will need to find a new place and that he has applied for social housing. He said that he has applied to South Side Housing Association. He has not been given an indication of how long his application may take, and he could not remember what they had said about it. He has not approached any other housing associations and he has not approached the local authority. He said that he did not know that he could approach more than one housing association at the same time. He was advised by Shelter to wait until an eviction order was granted before approaching the local authority about homelessness. He had not been able to find anyone to represent him today.
18. The Applicant was given the opportunity to respond about the allegations made about the incident. She said it was a case of "he said, she said" and she was sad that anything had occurred.

## Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 26<sup>th</sup> August 2018;
- c. A Notice To Leave, dated 7<sup>th</sup> September 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 22<sup>nd</sup> January 2024;
- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicant and her husband have two rental properties;
- h. The Applicant and her husband are of retirement age and wish to exit the rental market;
- i. The other rental property owned by the Applicant and her husband makes a small profit for them each month;
- j. The mortgage on this property has risen considerably in the last year;
- k. The annual rent does not meet the annual mortgage payment, common charges and other expenses which require to be met by the landlord;
- l. The property is a one bedroomed flat;
- m. The Respondent lives alone;
- n. The Respondent is not in employment.

## Reasons for Decision

19. It was 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”.*

20. The Tribunal now has to decide if it is reasonable to grant the eviction order.

21. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the letter from Rettie Estate Agent and from her own evidence. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.

22. The Tribunal accepted the Applicant’s reasons for wishing to sell, all of which were reasonable. The Applicant and her husband are of retirement age, wish to exit the rental market and are making a loss on the rental. The Respondent has known since at least September 2023, when the Notice to Leave was served, that the Applicant was intending to sell the property. He lives alone with no dependants. The Tribunal balanced the positions of the parties and considered that it was reasonable to grant the order.

23. The Tribunal decided to suspend the order by one month to allow the Respondent time to contact other housing associations and the local authority. There was no claim that the Respondent was in arrears and the additional month would not prejudice the Applicant and would give her time to arrange the marketing of the property.

### **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.**

**A Kelly**

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**Legal Member/Chair**

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**Date: 20<sup>th</sup> May 2024**