



**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/23/3264**

**Re: Property at 21 Victoria Street, Newport on Tay, Fife, DD6 8DJ (“the Property”)**

**Parties:**

**Mrs Frances Whittaker, 7 Lornes Street, Lytham, Lancashire, FY8 5BU (“the Applicant”)**

**Messrs TC Young, Solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicant’s Representative”)**

**Mr Allhan Rice and Mrs Gemma Rice, 21 Victoria Street, Newport on Tay, Fife, DD6 8DJ (“the Respondents”)**

**Tribunal Member:**

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

**Decision**

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

**Background**

1. This is an application for recovery of the Property. The application is dated 19 September 2023. The Applicant is seeking recovery under Grounds 1, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended. Ground 1 states that it is an eviction ground that the landlord intends to sell the let property.

2. A case management discussion had been held on 31 January 2024 and, subsequent to it, a Direction under Rule 16 of the Tribunal Rules had been made.

## **The Hearing**

3. A Hearing was held by video conference on 23 May 2024.
4. The Applicant was in attendance and gave evidence. She was represented by Ms Kirstie Donnelly, Solicitor.
5. Mrs Rice was in attendance and gave evidence. She said that Mr Rice was present with her to support her but would be taking no part in proceedings.
6. Prior to the Hearing, both parties submitted written representations and productions.

## **7. Documents before the tribunal**

- (i) Copy of the private residential tenancy agreement for the Property dated 1 February 2022 showing the commencement of the tenancy to be 1 February 2022 and the monthly rent to be £700.
- (ii) Copy rent statement as at 14 May 2024 showing the rent outstanding to be £600.
- (iii) Notice to Leave dated 19 June 2023.
- (iv) Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
- (v) Print of Title Sheet for FFE69833 (the Property).
- (vi) Letter of engagement from Lawrie Estate Agents dated 13 February 2024.
- (vii) Letter of engagement from John W. Gilbertson, Solicitors, dated 12 February 2024.
- (viii) Email correspondence between Applicant and John W. Gilbertson, solicitors, dated between June 2023 and February 2024.
- (ix) Correspondence from Godiva Mortgages dated March and April 2024.
- (x) Various documents concerning the Applicant's costs in relation to the Property.
- (xi) Letter from MJH Accountants dated 23 February 2024.
- (xii) Various documents submitted by Applicant in relation to repairs to the Property.
- (xiii) Correspondence with Fife Council relating to the repairing standard.
- (xiv) Electrical Installation Condition Report.
- (xv) Various documents relating to the Applicant's health including fitness to work certificates.
- (xvi) Documents relating to the health of the Applicant's daughter.
- (xvii) Correspondence relating to health of the Applicant's mother.
- (xviii) Medical Certificate of Cause of Death of Applicant's father.
- (xix) Documentation relating to the Respondents' application for housing from social housing providers.

- (xx) Letter from headteacher of Newport Primary School which is attended by the Respondent's nine year old daughter.
- (xxi) Letter from Mrs Mhairi Dennis, mother of Mrs Rice.
- (xxii) Documentation relating to rental costs of alternative private tenancies.
- (xxiii) Various photographs of parts of the Property.
- (xxiv) Receipt for a dishwasher.

## 8. Findings in Fact

- (i) The Applicant is the owner of the Property.
- (ii) The Applicant is entitled to sell the Property.
- (iii) The Applicant and the Respondents entered into a Private Residential Agreement for the Property on 1 February 2022.
- (iv) The Property has been the home of the Respondents for ten years.
- (v) The monthly rent is £700.
- (vi) The Applicant gave the Respondents Notice to Leave on 19 June 2023.
- (vii) The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 14 September 2023.
- (viii) The application for an order of eviction was submitted on 15 September 2023.
- (ix) The Private Residential Agreement dated 1 February 2022 contains eviction grounds including Ground 1: "The landlord intends to sell the property for market value within three months of the tenant leaving the property."
- (x) The Notice to Leave which was dated 19 June 2023 referred to Ground 1 which was being relied on by the Applicant as the reason for seeking recovery of the Property.
- (xi) The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 4 May 2023.
- (xii) The Respondents continue to reside in the Property along with daughters aged nineteen, nine and three.
- (xiii) The Respondents' nineteen old daughter works part time, drives and has a car.
- (xiv) The Respondents' nine year old daughter attends a primary school local to the Property and is well settled and supported.
- (xv) Mr and Mrs Rice have separated but continue to reside together in the Property.
- (xvi) It is the intention of Mrs Rice, if evicted from the Property, to seek housing for herself and her three daughters.
- (xvii) Mrs Rice drives and has a car.
- (xviii) Mrs Rice works at Wormit Primary School which is 1.3 miles from the Property and where here youngest daughter is in the nursery department.
- (xix) Mrs Rice provides support and some care to her mother who lives close to the Property.
- (xx) There are rent arrears of £600.
- (xxi) The Applicant resides 266 miles from the Property.
- (xxii) The Property had been the home of the Applicant until 2013/2014.
- (xxiii) The Applicant has no other property which she lets out.
- (xxiv) The Applicant's current monthly mortgage payment for the Property is £554.91.
- (xxv) The annual cost of property insurance for the Property is £530.29.

- (xxvi) The Applicant pays £288 per annum for accountancy fees in respect of completion of accounts and a tax return in respect of earnings from the Property.
- (xxvii) The Applicant pays a life insurance premium of £45.13 per month in respect of the outstanding mortgage of £83578.
- (xxviii) The Applicant pays £16.50 per month for maintenance of the gas central heating system in the Property.
- (xxix) Landlord registration costs in respect of the Property are £90 payable every three years.
- (xxx) The Applicant travels frequently to Scotland from her home in England.
- (xxxi) The Applicant's father died on 15 February 2024.
- (xxxii) When the Applicant's father was fit, he assisted the Applicant to manage the Property and deal with any repair issues.
- (xxxiii) The Applicant provides support to her mother who resides in Scotland.
- (xxxiv) The Applicant lives with her husband who owns the Property in which she resides in England.
- (xxxv) The Applicant has health issues and is currently certified by her doctor as being unable to work.

## 9. Findings in Fact and Law

- (i) The Applicant is the owner of the Property and, as such, is entitled to sell it.
- (ii) The Applicant intends to sell the Property within three months of gaining vacant possession.
- (iii) It is reasonable to issue an eviction order in respect of the Property.

## The Law

### Private Housing (Tenancies) (Scotland) Act 2016

#### SCHEDULE 3 EVICTION GROUNDS

*(introduced by section 51)*

#### PART 1

#### 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 subparagraph (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.*

## **Submissions**

10. Ms Donnelly made oral submissions and also relied on the written representations submitted by her.
11. Ms Donnelly invited the tribunal to have regard to the cases of Manson and Downie and Turner (2023 UT38) and Cumming v Danson, ([1942] 2 All ER 653 at 655) in arriving at its determination. She said that the tribunal should take an “all the circumstances” approach and objectively balance the rights and interests of both parties.
12. Ms Donnelly said that there is evidence that the Applicant intends to sell the Property within three months of gaining possession of it.
13. Ms Donnelly invited the tribunal to accept that the Applicant has good reasons to sell the Property. She said that the costs being incurred by the Applicant in relation to the Property set against the income from the rent supported the view that it was not reasonable for her to consider maintaining the tenancy and that it was not viable for her to do so. She said that selling the Property would relieve the Applicant’s financial concerns.
14. Ms Donnelly set out the health issues which the Applicant has and her caring responsibilities for her mother. She invited the tribunal to accept the Applicant’s evidence that the funds achieved from the sale of the Property could be used to assist in the purchase of a property in England which would more easily accommodate the Applicant’s mother if she came to stay with her.
15. Ms Donnelly said that there was evidence that Mrs Rice drives and has a car and would be able to deal with any caring responsibilities she has for her mother if the eviction order were granted. She said that Mrs Rice’s daughter works and that there was no evidence as to why her income could not be utilised to assist with paying for another private let property together with funds from Mr Rice who is in employment.

16. Ms Donnelly said that the evidence of Mrs Rice demonstrated that she had not made all possible efforts to obtain housing because she had not made an application to Dundee City Council which is geographically close to Newport on Tay.
17. Ms Donnelly asked the tribunal to disregard any issues raised by the Respondents in connection with repairs to the Property as she had conceded in evidence that these were not relevant to the application for an order of eviction.
18. Ms Donnelly submitted that the necessary requirements to evidence Ground 1 had been met and that it was reasonable to grant the order.
19. Mrs Rice said that she has provided evidence that she was willing to move and that she had made efforts to achieve alternative accommodation.
20. Mrs Rice said that, if an order of eviction were granted, the Council would advance the housing application already with it and would treat the family as homeless.
21. Mrs Rice said that she wanted to avoid disruption for her children and that the tribunal should have regard to the fact that the Property has been her family home for ten years.

## **Reasons**

22. The tribunal had regard to the documentation which had been lodged by the parties.
23. Much of the evidence given was either not challenged by the opposing party or was accepted by it and it is useful to set out what was not contested.
24. The Applicant lived in the Property until ten years ago when she moved to England so that she and her husband could provide support for her husband's father who had become ill.
25. The Applicant let the Property to the Respondents who have lived in it since.
26. The Applicant's father provided assistance to the Applicant in managing the Property until he became ill and he died on 16 February 2024.
27. The Applicant has remortgaged the Property and provided details of the costs which she has to meet to enable the tenancy to continue. These costs were not disputed by Mrs Rice.
28. The Applicant has health issues.

29. Mr Rice's mother has health issues as detailed in her letter dated 1 March 2024.
30. The Respondent's younger daughters are settled at school and nursery.
31. The Applicant has no other properties which she lets out.
32. Mrs Rice and Mrs Whittaker were reliable and credible witnesses and no issues of credibility had to be determined by the tribunal.
33. Some costs incurred by the Applicant in relation to the Property did not seem to the tribunal to be directly as a consequence of owning it. For example, the financial schedule prepared by the Applicant's accountant included costs for travel to Scotland and Mrs Whittaker conceded that she travelled to Scotland to see her mother who has health issues and that she would attend to any matters concerning the Property on these trips.
34. Mrs Whittaker said that her father used to assist her in managing the Property. She said that she could not afford to employ a letting agent because the Property does not generate sufficient income.
35. On the face of it, the Applicant's costs for the Property were not considerably more than the rent being paid but that took no account of maintenance costs and things like the Electrical Installation Condition Report which does not require to be done on an annual basis. The Applicant would also require to pay tax on the rental income and not all of her costs could be set against income for tax purposes. The tribunal noted the letter of MJH Accountants which referred to a statement of the Applicant's income and expenditure for the Property together with her own household expenses. The letter states: *"....the rental property in isolation is running at a loss and when taken in conjunction with the household income and expenses in the same period, it uses most of the income Mrs Whittaker has. It is no longer financially viable for Mrs Whittaker to run this property."*
36. Mrs Whittaker provided evidence of her health issues and the tribunal had before it documentary evidence of this. She is currently not able to work and has been prescribed various medications. The tribunal noted the terms of a letter from the Applicant's GP dated 22 February 2024 which referred to Mrs Whittaker advising her of stress and anxiety in relation to *"difficulties in selling her house."*
37. Mrs Whittaker had produced evidence of her mother's health issues and she said that, if she recovers possession of the Property and is able to sell it, she and her husband plan to sell his property in England to purchase a property there which could more easily accommodate her mother.
38. The tribunal noted the efforts made by Mrs Rice to find alternative accommodation and noted that her application for housing had been submitted two days prior to the Notice to Leave. She said that the application had been submitted because her marriage had been adversely affected because of issues with the Property

and the tenancy. The tribunal did not come to a view on that matter. The tribunal noted that, after the Notice to Leave, Mrs Rice had widened the search for property by intimating to the local authority that she would be prepared to be housed in St Andrews which is thirty minutes' travel from Newport on Tay.

39. Mrs Rice had submitted documentation which vouched not only that she had made a housing application to her local authority and to a housing association but also that she had engaged her local councillor to assist.
40. The tribunal noted that the Respondents had not found alternative housing in the private rental market. They had submitted evidence that rent for another property they had enquired about was over £1000 per month.
41. Mr Rice said that she had not made a housing application to Dundee City Council because she did not want to bring her children up in a city when they had been raised in a small town.
42. Mrs Rice said that her mother and step father live near to the Property. She said that her step father sometimes works away from home and that she provides support to her mother who had health issues. The tribunal noted the terms of the letter from Mrs Dennis, mother of Mrs Rice, which is dated 1 March 2024. The letter details the health and mobility issues of Mrs Dennis and that fact that Mrs Rice lives only two minutes away and is able to provide support.
43. Mrs Rice said that her three year old daughter is at nursery in the school where she works and that her nine year old daughter is at the local primary school, is settled there and receives all necessary support. She said that if her daughter had to move school, it would be unsettling for her and she referred to the letter from the headteacher of the primary school which stated that the child is feeling nervous and worried about the family's housing situation.
44. Mrs Rice said that, although she had widened her property search, she would still want her children to attend the same primary school and nursery. She said that if, for example, she was to be housed in St Andrews she would keep the same job and would take her youngest daughter to the same nursery and her other daughter to the same primary school.
45. Mrs Rice said that she was realistic and that she realised that she would have to move from the Property at some time but that she was concerned about the uncertainty and the fact that she and her family could end up in a homeless hostel. She said that the Council would not advance her application or housing until there was an order from the Tribunal. She said that she also had concerns that the Council may offer housing somewhere else in Fife which would make it difficult for her work and the schooling of the children.
46. Mrs Rice accepted that there are rent arrears of £600 and that this was as a consequence of one monthly rental period being missed. She said that the arrears had been £700 but that she had repaid £100. She said that, in ten years,



she had only once missed a payment of rent. This was not challenged by the Applicant.

47. Mrs Rice accepted that she had lodged documentation and photographs relating to the condition of the Property. She conceded that this was irrelevant and that she had submitted it “as a matter of principle.”

### **Discussion and Determination**

48. The tribunal had regard to the approach which should be taken on such applications as set out by Sheriff Collins in *Manson and Downie v Turner*. It is only possible to grant an eviction order pursuant to ground 1 if a tribunal is satisfied that the facts in sub paragraphs 2 (a) and (b) are established and that it is reasonable to do so on account of those facts per sub paragraph 2 (c).
49. The first matter to be established is that the Applicant is entitled to sell the Property. The tribunal was satisfied that, as the registered owner, she is entitled to sell the Property.
50. The next matter to be established is whether 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. The tribunal accepted the evidence of the Applicant in this regard which was not challenged by Mrs Rice. The documentation from the estate agents and the solicitor supported this. The tribunal also considered that the evidence before it in connection with the Applicant’s financial position was indicative of the Applicant’s desire to sell.
51. The tribunal had to determine whether it was reasonable to issue an eviction order. Such a determination is arrived at after a weighing and balancing exercise. The tribunal is obliged to consider the whole of the circumstances and take into account all factors. In the *Cumming v Danson* case, Lord Greene MR said: “.... *In considering reasonableness... it is in 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 commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.*”

52. In considering reasonableness the tribunal requires to balance the rights of both parties and to discard any issues which it does not consider to be relevant.
53. The tribunal considered Mrs Rice to have done her best to obtain housing and that her decision not to submit an application to Dundee City Council was reasonable. It is within judicial knowledge that rents in private tenanted properties have increased.
54. The tribunal accepted that Mrs Rice provides support to her mother but noted that she said that, if she were housed somewhere half an hour travel from the Property, she would drive her children to the primary and nursery school they are currently attending. It seemed to the tribunal that Mrs Rice would be able to drive to continue to provide support for her mother even if she were living some distance away.
55. The evidence of Mrs Rice was that the schooling and nursery placement of her children would not be necessarily adversely affected because she would drive them from wherever they were living.
56. The tribunal accepted that, if the Respondents were evicted, there would be a significant impact on the family since they would have to leave what has been their home for ten years.
57. The tribunal accepted that the Applicant has health issues but it did not have evidence that this was wholly as a consequence of being a landlord. It was clear from the evidence both oral and written that there may be other factors.
58. The tribunal accepted that sale of the Property would enable the Applicant to make alternative housing arrangements so that she could more easily facilitate her mother staying with her.
59. The tribunal accepted that management of the property was difficult given that she resides over 260 miles away and that it would not be financially viable for her to employ a letting agent.
60. The tribunal accepted that ownership of the Property is a financial burden for the Applicant and that the income from rent does not meet its costs.
61. In arriving at its determination, the tribunal had no regard to the existence of rent arrears or to the condition of the Property as it did not consider either of these matters to be relevant.

62. The tribunal finds that it is reasonable to grant the order. In balancing the rights of both parties, the tribunal considers that the balance falls in favour of the Applicant. In arriving at its determination, the tribunal had regard to all the evidence and the representation of the parties.

### **Decision**

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

### **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.**

Martin McAllister

**Legal Member  
31 May 2024**