

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/23/4465

**Re: 29 Flemings Yard, Crail Road, Anstruther, Fife, KY10 3EL
 (“the Property”)**

Parties:

**Mr Jonathan Dickson, 77 Marchbank Gardens, Paisley, PA1 3JD
 (“the Applicant”)**

**Miss Fiona Anderson, 29 Flemings Yard, Crail Road, Anstruther, Fife, KY10 3EL
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Miss Eileen Shand (Ordinary Member)

Present:

The case management discussion took place at 2pm on Thursday 27 June 2024 by teleconference call (“**the CMD**”). Both the Applicant and the Respondent were present. The clerk to the Tribunal was Lynn Coy.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 1 of schedule 3 to the 2016 Act against the Respondent.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property on the basis of ground 1 (the landlord intends to sell the Property).
3. Ground 1 of schedule 3 to the 2016 Act requires that the landlord (so, the Applicant):
 - “(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.”
4. The application form was dated 11 December 2023 and the Applicant provided copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondents dated 21 December 2021 and 1 February 2022 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 31 August 2023 addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 26 November 2023 and that the eviction ground was “Your Landlord intends to sell the Let Property” (ground 1).
 - c. covering e-mail to the Respondent (using the e-mail address for notices set out in the Tenancy Agreement) dated 31 August 2023 attaching the Notice to Leave.
 - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail sending it to the local authority on 7 December 2023.
 - e. an offer to purchase the Property (on the headed notepaper of Pacitti Jones) addressed to Thorntons dated 31 October 2023.
5. A notice of acceptance of the application was issued dated 10 April 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 11 December 2023 and 15 March 2024.
6. The Respondent was sent notice of the CMD by letter dated 22 May 2024, which was confirmed (in the certificate of intimation from Roderick Stevenson of Walker Love, sheriff officers) as having been served personally on the Respondent on 23 May 2024.
7. The Respondent had not provided written representations in advance of the CMD.

8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The Applicant explained that he wanted to sell the Property for financial reasons; he wanted to release the capital in the Property, which would make things financially a lot easier for him in providing for his children.

10. The Applicant confirmed that the offer to purchase the Property (of which there was a copy in the case papers) was still live and that he was still engaged with the offering party through his solicitors.

11. The Applicant noted that he had served the Notice to Leave in August 2023 but that the Respondent had been advised by Fife Council not to leave the Property unless and until there was an eviction order.

12. The Applicant noted that the home report value for the Property was £170,000 but that he had agreed a sale at below that value (£157,000) because he needed to sell.

13. The Applicant confirmed that he did not have any other properties that he rented out.

14. The Respondent confirmed that she had no comment to make about the market value of the Property.

15. With regard to why it would be reasonable to grant an eviction order, the Applicant reiterated that he needed to sell for financial reasons and confirmed that he had explored (with the assistance of his letting/selling agents) if there was an option to sell to someone who would continue to let out the Property so that the Respondent could continue to live there, but that he had not been able to find such a purchaser.

16. The Applicant commented that the Respondent had been an amazing tenant for a number of years.

17. The Respondent confirmed that she was still in occupation of the Property and that she had been in contact with the local authority about the proceedings to seek an eviction order.

18. With regard to whether or not it would be reasonable to grant an eviction order, the Respondent confirmed that she wanted an eviction date to give to Fife Council in order to get other housing. She confirmed that she had not received any offer for re-housing at this stage and that Fife Council told her that they could not do anything for her until then. The Respondent confirmed again that she wanted an eviction date.

19. The Respondent confirmed that the Property had not been adapted for her.

FINDING IN FACT

20. The Tenancy Agreement stated that notices to be served under the Tenancy Agreement were to be served using the email addresses set out in the Tenancy Agreement.
21. The Tribunal was satisfied, on the balance of probabilities:
- a. the Notice to Leave was valid and had been validly served;
 - b. the section 11 notice was valid and had been validly served:
22. The Tribunal noted that the Applicant was the registered landlord of the Property.
23. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number FFE91383), albeit that the spelling used on the Land Register entry was "Jonathon Scott Dickson". The Applicant confirmed that the correct spelling was "Jonathan" and that his middle name was "Scott".
24. The Tribunal was satisfied, on the balance of probabilities, that the Applicant intended to sell the Property for market value (taken as meaning what a willing purchaser was willing to pay a willing seller on the open market for the Property).

REASON FOR DECISION

25. The Tribunal was satisfied, on the balance of probabilities, that:
- a. The requisite notices were valid and had been validly served (and received by the Respondent);
 - b. As the Applicant was the registered proprietor of the Property, the Applicant was entitled to sell the Property;
 - c. An offer to purchase the Property had been received on behalf of the Applicant and was still live;
 - d. The Property was being marketed for sale on the open market through Thorntons and, as at the date of the CMD, showed as being "Under Offer" (<https://thorntons-property.co.uk/Anstruther/KY10/29-Crail-Road-1-bedroom-House>); and
 - e. It was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. primarily, there was no objection to the eviction order from the Respondent and, indeed, the Respondent wanted an eviction order to be granted;

- ii. the Tribunal was satisfied, on the balance of probabilities, that the Applicant had made efforts to find a purchaser for the Property who would allow the Respondent to remain as a tenant and he did not have other rental properties which could be considered for sale instead of the Property;
- iii. the Applicant was seeking to release capital from the Property to support his children.

26. Accordingly, the Tribunal found that ground 1 (landlord intends to sell) of schedule 3 to the 2016 Act applied.

DECISION

27. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 1 (landlord intends to sell).

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

27 June 2024

Chair

Date