



**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/24/0534**

**Re: Property at 37 Edmonstone Road, Danderhall, Dalkeith, EH22 1QH (“the Property”)**

**Parties:**

**Mrs Nicola Henderson, Mr Mark Henderson, 29 Oxenfoord Drive, EH37 5QE, EH37 5QE; 29 Oxenfoord Road, Pathhead, EH37 5QE (“the Applicant”)**

**Ms Jordan Black, 37 Edmonstone Road, Danderhall, Dalkeith, EH22 1QH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Sandra Brydon (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 2<sup>nd</sup> February 2024 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 (“the Act”).
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date 7<sup>th</sup> February 2022;
  - ii. Copy Notice to Leave dated 25<sup>th</sup> October 2023;

- iii. Copy email dated 25<sup>th</sup> October 2023 to the Respondents serving the Notice to Leave;
  - iv. Section 11 Notice and proof of service;
  - v. Contract with McDougall McQueen estate agents dated 22<sup>nd</sup> January 2024.
3. The Application was served on the Respondent by Sheriff Officers on 17<sup>th</sup> June 2024.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Ms Scott of Fidra Lettings Ltd. There was no attendance by the Respondent or any representative on her 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. Ms Scott sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the Applicants 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 Ms Scott to address the Tribunal on reasonableness. Ms Scott said that the Applicants need to sell the property to finance the running of their business. It is, to her knowledge, the only rental property which they have. Ms Scott said that the Respondent had been in the property for some time. She lives there with her daughter, who is around 10. She works locally. She is not aware of the Respondent or her daughter having any health issues. Ms Scott said that the Respondent has been a good tenant, and she has offered to assist her in finding other accommodation if her agency has anything suitable. She said that the Respondent has told her that she has approached the local authority and that they cannot deal with her application until an eviction order has been granted.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 7<sup>th</sup> February 2022;
- c. A Notice To Leave, dated 25<sup>th</sup> October 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 17<sup>th</sup> June 2024;
- f. The Applicants intend to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicants require to sell the property to finance the running of their business;

- h. The Respondent lives in the property with her young daughter;
- i. The Respondent told Ms Scott that the local authority cannot deal with her housing application until an eviction order has been granted.

## 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*

*“(d)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 was of the view in this case that the Applicant had established Ground 1 by provision of the estate agents’ letter and by the submissions made by Ms Scott. 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 Applicants’ reasons for wishing to sell. The Tribunal noted that the Respondent had not joined the call nor made any written submissions and accepted that she had told Ms Scott that the local authority would not deal with her housing application until an eviction order had been granted. 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.**

**Alison Kelly**

25/07/2024

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**Legal Member/Chair**

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**Date**