



**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/23/4079**

**Re: Property at 13 Caledonian Court, Eastwell Road, Dundee, DD2 3FF ("the Property")**

**Parties:**

**Mr Steven Gold, 1 Somerville Place, Dundee, DD3 6JJ ("the Applicant")**

**Miss Gail Taylor and Mr Stuart Bell, 13 Caledonian Court, Eastwell Road, Dundee, DD2 3FF ("the Respondents")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

At the Case Management Discussion ("CMD"), which took place by telephone conference on 4 July 2024, the Applicant was not present but was represented by Ms Blazniak of JMyles & Co, Solicitors, Dundee. The Respondents were not in attendance but were represented by Ms Goodson of Dundee Law Centre.

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

**Background**

A CMD had previously taken place on 13 June 2024. At that CMD the Tribunal could not be satisfied from the information provided that it is reasonable to grant an eviction order. Detail of the financial strain being felt by the Applicant was not available and only general submissions were made in that connection.

To enable the Tribunal to take an informed view, it was resolved that the CMD would be adjourned for the Applicant to provide (and vouch as appropriate):-

- i. Specific details of how the mortgage payments payable on the Property have increased as a result of the increase in interest rates;

- ii. Details of the changes to the taxation of rental income and how those changes have affected the Applicant financially;
- iii. Details of the running costs associated with the maintenance and repair of the Property;
- iv. Details of the likely equity in the Property; and
- v. The age of the Applicant.

The Respondents' representative was also required to lodge with the Tribunal a Mandate authorising representation on behalf of the Second Respondent.

Prior to the CMD today the Tribunal had received the following additional documentation:-

- Email from JMyles & Co on behalf of the Applicant dated 7 June 2024 with letter attached.

### **The CMD**

At the CMD the parties' representatives made the following submissions:-

#### *For the Respondents*

- i. That due to an oversight a Mandate had not been lodged for the Second Respondent. This would be rectified. Ms Goodson appeared for both Respondents.
- ii. The Respondents' position remained unchanged from the previous CMD. The Respondents would not consent to an eviction order being granted but offered only formal opposition thereto.
- iii. The Respondents do not challenge the content of the letter of 7 June 2024 lodged on behalf of the Applicant.
- iv. There is ongoing contact with the local authority with regard to alternative housing options for the Respondents.

#### *For the Applicant*

- i. Ms Blazniak adopted the submissions made in the letter to the Tribunal dated 7 June 2024.
- ii. The Applicant purchased the Property in 2008.
- iii. The roof repairs referred to took place towards the end of 2023 and the Applicant made payment for his share thereof in advance.
- iv. The works to the fuse board took place in Summer 2023.
- v. In response to a question from the Tribunal Ms Blazniak could not confirm the scale of the effect of the tax changes in monetary terms. She had not been provided with a figure by the Applicant.
- vi. The Applicant seeks an eviction order.

### **Findings in Fact**

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondents in terms of the PRT.
- iii. The PRT commenced on 6 June 2018.
- iv. The Applicant is 57 years of age.
- v. The Second Respondent is the son of the First Respondent.
- vi. The First Respondent's 16 year old grandson stays with the Respondents and is the son of another child.
- vii. The rent payable in terms of the PRT was agreed to be £450 per calendar month.

- viii. On 19 May 2023 the Applicant's representative served on each of the Respondents by recorded delivery post a Notice to Leave requiring the Respondents remove from the Property by 17 August 2023 on the basis that the Applicant wishes to sell the Property.
- ix. The Notice to Leave was also served on the First Respondent by email on 19 May 2023.
- x. The Applicant is entitled to sell the Property as heritable proprietor thereof.
- xi. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it.
- xii. The Applicant wishes to sell the Property for the following reasons:-
  - a. There is a mortgage over the Property. The monthly mortgage payments exceed the monthly rental income by £68.21 due to the increases in bank interest rates.
  - b. Changes to the taxation of rental income have further disadvantaged the Applicant.
  - c. Additionally, the Applicant pays buildings insurance in respect of the Property of £31.20 per month.
  - d. The Applicant has to meet the costs of repairs required to the Property and incurred electricity costs of £620 in Summer 2023 relative to the fuseboard and a share of roof repairs of £1070 in November 2023.
  - e. The mortgage payments due and the running costs of keeping the Property insured and in repair mean that, as a whole, the Applicant is now subsidising the tenancy.
- xiii. The Property was previously a viable investment. That is not now the case.
- xiv. The Applicant is intending to retire. He has health issues that may require him to retire early.
- xv. The Applicant has 2 other rental properties, one of which is tenanted by his brother and the other by a close friend. The Property is the first one that the Applicant intends to sell.
- xvi. By letter dated 14 November 2023 the Applicant's representative served on Dundee City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- xvii. The Respondents have made an application to Dundee City Council for accommodation.
- xviii. It is reasonable to grant an eviction order.

### **Reasons for Decision**

The Respondents did not challenge the Applicant's position in any respect and offered no substantive opposition to the granting of an eviction order. The Tribunal therefore accepted the Applicant's submissions.

The Tribunal had regard to Schedule 3, Part 1, paragraph 1 of the Private Housing (Tenancies)(Scotland) Act 2016, which sets out the ground of eviction upon which the application proceeds. That paragraph states:-

*"1. Landlord intends to sell*

*(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 Tribunal was satisfied that sub-paragraphs 1 and 2 of paragraph 1 are met from the documentation produced with the application, in particular the Single Survey Report of Shepherd Chartered Surveyors following an inspection on 6 April 2023 and the marketing invoice of Rosie Fraser Real Estate dated 27 April 2023.

On the question of the reasonableness of granting an eviction order in terms of sub-paragraph 3, there was no substantive challenge to the Applicant’s reasons for selling the Property. Based on his submissions the monthly mortgage payments and buildings insurance premiums substantially exceed the rental income paid and, when taken with the other running costs relative to repairs and the additional costs associated with the changes to the taxation of rental income, the Applicant is subsidising the tenancy which is not now financially viable as an investment. In these circumstances and in the absence of any contrary submissions for the Respondents the Tribunal determined that it is reasonable to grant an eviction order and made an order to that effect.

### **Decision**

The Tribunal grants an eviction order against the Respondents in favour of the Applicant.

### **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.**

# G Buchanan

Legal Member/Chair

\_\_\_\_\_  
4 July 2024  
Date