



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/0733**

**Re: Property at 19 Blaikies Mews, Dundee, DD3 7UN (“the Property”)**

**Parties:**

**Craigowl Investments Limited, 4A Albert Street, Dundee, DD5 4JS (“the Applicant”)**

**Mrs Claudia Hogan, 19 Blaikies Mews, Alexander Street, Dundee, DD3 7UN (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Ahsan Khan (Ordinary Member)**

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

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

**Background**

1. An application was received from the Applicant on 14 February 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of the property under Ground 1 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
  - (i) Copy private residential tenancy agreement between Mr Michael Callachan, a director of the Applicant company, and the Respondent, which commenced on 25 May 2022.
  - (ii) Copy notice to leave citing ground 1, and stating the date before which proceedings could not be raised to be 28 January 2024

- (iii) Copy photograph purporting to evidence personal delivery of the notice to leave.
  - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council
  - (v) Copy rent statement showing arrears of rent due by the Respondent to be £5775 as at February 2024.
3. Further information was requested from the Applicant by the tribunal administration on 15 February, 13 March and 11 April 2024. In response to these, further information was submitted by Mr Callachan on behalf of the applicant, including proof of sending of the section 11 notice to Dundee City Council on 12 January 2024. In emails of 13 March and 11 April 2024, Mr Callachan stated that he had hand delivered the notice to leave to the respondent on 3 November 2024, as evidenced in the date stamped photograph he had submitted with the application.
  4. Mr Callachan also confirmed in the emails of 13 March and 11 April 2024 that the Applicant wished to rely on grounds 12 and 12A as well as ground 1. This was because the reason the Applicant wished to sell was that it could no longer afford to rent out the property due to the substantial rent arrears which the Respondent had accrued.
  5. The application was accepted on 5 May 2024, subject to the matter of including Grounds 12 and 12A which would be addressed at the case management discussion (CMD).
  6. Notice of the CMD scheduled for 12 September 2024, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 15 August 2024. The Respondent was invited to submit written representations by 30 August 2024.
  7. The tribunal issued a direction to the Applicant on 25 August 2024, requiring it to provide by 5 September 2024 further evidence of its intention to sell the property, such as a contract or terms of business letter from a solicitor or estate agent regarding the intended sale.
  8. In the direction, the tribunal also noted that it would consider any request to add grounds 12 and 12A to the application at the CMD. It noted that in the event that such an amendment was allowed, it would be required, in deciding whether it would be reasonable to issue an eviction order, to consider the extent to which the Applicant had complied with the pre-action requirements which apply to those grounds.

9. A response was received from Mr Callachan on behalf of the Applicant on 28 August 2024, enclosing a letter from The Chamber Practice Solicitors and Estate Agents dated 26 August 2024 confirming that they would be selling the property on his behalf.
10. No written representations were received from the Respondent prior to the CMD.

### **The case management discussion**

11. A CMD was held by teleconference call on 12 September 2024. Both Mr Callachan and his wife Mrs Jenene Callachan, who is a shareholder in the Applicant company and is responsible for its day to day running, were present on the teleconference call and represented the Applicant. The Respondent was not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from her.
12. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the Respondent.

### **Preliminary issue**

13. The tribunal chairperson asked Mr and Mrs Callachan whether the Applicant wished to proceed on ground 1 only, or whether they sought the tribunal's permission to add grounds 12 and/or 12A. She noted that the Applicant had now submitted evidence tending to show an intention to sell the property, as required in terms of ground 1. Regarding grounds 12 and 12A, while there was reference to rent arrears in Part 3 of the notice to leave, neither of these grounds had been clearly cited. In any case, in the event that the tribunal were to agree to such an amendment, the applicant would require to provide further information. There would be a need to provide evidence of the extent to which the Applicant had complied with the pre-action requirements, and the tribunal would also have to consider whether the arrears were wholly or partly due to a delay or failure in the payment of a relevant benefit.
14. Mr Callachan was concerned that if the Applicant did not proceed on one of the rent arrears grounds, it would be unable to recover the rent arrears due. The chairperson confirmed that the accompanying civil proceedings application would be considered separately and that the ground under which the application proceeded would not affect consideration of that application.
15. Having considered this, Mr Callachan confirmed that the Applicant wished to proceed on ground 1 only.

## **The applicant's submissions**

16. Mr Callachan asked the tribunal to grant an eviction order under ground 1. He confirmed that it was the Applicant's intention to sell the property once it was vacant. The Respondent had substantial rent arrears and as a result the Applicant was finding it difficult to keep up the mortgage payments on the property. The Applicant had therefore decided it was no longer viable to rent the property and had decided to sell it.
17. Mrs Callachan said that various attempts had been made to communicate with the Respondent but she had failed to respond. Mr and Mrs Callachan had been unable to gain entry to the property to inspect it.
18. They believed that the Respondent had been untruthful with them regarding various matters. She had told them before entering into the tenancy that she was employed by a local company but that had turned out to be untrue. They had later discovered that she was in receipt of universal credit and housing benefit, which she had not told them. They had applied to the council for direct payment of her rent but this had been refused for confidential reasons. They believed she was still in receipt of housing benefit, but she was not paying her rent.
19. Mrs Callachan said that she had tried to help the Respondent, sending her information about discretionary housing payments and offering to help her apply for universal credit. The Respondent had refused to engage with her, however. Mr Callachan said that the Applicant had tried to set up multiple payment plans with the Respondent but that these had not been honoured. The Respondent had also claimed to suffer from a variety of health issues but it was unclear whether these were genuine.
20. The Applicant been contacted by Dundee City Council which had tried to help them to resolve the matter. The Council had arranged 2 separate visits to the property following complaints from the Respondent about the state of the property, but they had been unable to gain access.
21. Mr and Mrs Callachan thought that the Respondent was living in the property with her adult daughter. They did not believe that there was anyone else living there.

## **Findings in fact**

22. The tribunal made the following findings in fact:
  - The Applicant owns the property.
  - The Applicant is the registered landlord for the property

- There is a private residential tenancy in place between Mr Callachan and the Respondent. The tenancy commenced on 25 May 2022.
- The rent due under the tenancy is £600 per month due in advance on the 7<sup>th</sup> of each month.
- The Notice to Leave was validly served on the Respondent by means of personal delivery by Mr Callachan on behalf of the Applicant on 3 November 2023.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.
- The Respondent lives in the property with her adult daughter.
- The Respondent has not paid rent to the Applicant since September 2023 and currently owes £9375 in rent arrears.

### **Reasons for decision**

23. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
24. The tribunal firstly considered whether the legal requirements of ground 1, as set out in Schedule 3 of the 2016 Act (as amended ) had been met. Ground 1 states:

#### ***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, and*

*(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.*

25. The tribunal determined that, as the owner of the property, the Applicant was entitled to sell it. Having had regard to the oral evidence submitted on behalf of the Applicant, and the letter from The Chamber Practice Solicitors and Estate Agents dated 26 August 2024, the tribunal also found that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
26. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
27. The tribunal found Mr and Mrs Callachan to be credible and honest in their evidence. It noted that the Respondent owed a significant amount of rent arrears and that no rent had been paid since September 2023. It also noted that the Respondent appeared not to have been truthful with the Applicant when securing the tenancy.
28. The tribunal also noted from the case papers that there appeared to have been a previous eviction order granted against the Respondent on grounds of rent arrears in relation to a previous tenancy.
29. The tribunal noted that the Appellant appeared to have been a reasonable landlord and had tried to engage with the Respondent and assist her in repaying the rent arrears, but had been unsuccessful.
30. The tribunal also took into account what the applicant said about the Respondent's circumstances, aside from the rent arrears. In the absence of written representations from the Respondent or any appearance by her at the CMD, the information available to the tribunal was unfortunately limited.
31. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the significant rent arrears owed by the Respondent, which continue to increase, and to the impact which this has had on the applicant. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

## **Decision**

The tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession 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.**

**S O'Neill**

**Legal Member/Chair**

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**12 September 2024\_**  
**Date**