



**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/24/1270**

**Re: Property at 150 Park Road, Calderbank,, Airdrie, ML6 9TD (“the Property”)**

**Parties:**

**Mr John Condie, 22 Coll place, Airdrie, ML6 8FR (“the Applicant”)**

**Ms Mariesa O Grady, 150 Park Road, Calderbank,, Airdrie, ML6 9TD (“the Respondent”)**

**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 3 October 2024, the Applicant was not present and was represented by Ms Callaghan of TC Young, Solicitors, Glasgow. The Respondent was also present.

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

**Background**

A CMD had previously taken place on 4 July 2024. That CMD was adjourned to allow the Applicant to produce detail and documentation to support the application for an eviction order, in particular, to provide sufficient detail of the Applicant’s circumstances and to provide (and vouch where possible) the following:-

- i. Relative to the family home at 74 Station Road, Caldercruix, Airdrie –
  - (a) Prior to sale, was that property subject to a mortgage and, if so, details thereof?
  - (b) Prior to the sale who lived in that property?
  - (c) Why was the property sold in November 2023 when possession of the Property had not been secured and was not guaranteed?
- ii. Details of any other properties owned or part owned by the Applicant, the location and size of those properties, whether these properties are mortgaged and details of occupation of those properties.

Prior to the CMD the Tribunal had received from the Applicant's representative an email dated 17 September 2024 with written representations and a Second Inventory of Productions attached.

### **The CMD**

At the outset of the CMD Ms Callaghan confirmed that the Applicant still seeks an eviction order. The Respondent stated that her position is unchanged from previously.

Ms Callaghan took the Tribunal through the written representations attached to her email of 17 September 2024. Ms Callaghan also made the following additional oral representations, supplemented by oral representations from the Applicant directly from time to time:-

- i. Both the Applicant's daughters have now moved into their own homes and accordingly the Property is required by the Applicant and his wife alone.
- ii. Whilst at the outset of the tenancy the Applicant made the Respondent's parents aware of his long-term intention to move back into the Property, Ms Callaghan did not have evidence that the Respondent herself was made so aware.
- iii. The Tribunal questioned the relevance of the issues of access raised by the Applicant. The tribunal reminded Ms Callaghan and the Applicant that the application proceeds on the basis of the Applicant's need to move into the Property as his only or principal home. Accordingly, issues of access did not appear pertinent.
- iv. Production 3 of the Applicant's Second Inventory of Productions (rather than Production 4) was an illustration of the financial impact of the mortgage relative to 74 Station Road being re-engineered as at August 2024 when the fixed rate term was otherwise due to end.
- v. The proceeds of sale of 74 Station Road were £310,000 and were used not only to clear the mortgage thereon but also to clear the mortgage on the Property.
- vi. With regard to reasonableness Ms Callaghan stated that the Applicant is suffering mental health issues and is on medication for anxiety as a result of these proceedings. He has been deemed vulnerable and is seeing a mental health nurse.
- vii. The Applicant and his wife share the property of their son and his partner. Their son's energy bills have increased as a result of their occupation but the Applicant confirmed he contributes towards his son's increased household costs.
- viii. Miss Callaghan stated that their son is hoping to start a family soon and can't do so whilst the Applicant and his wife live there.
- ix. The Applicant does not receive any housing assistance.
- x. The Applicant's furniture is in storage costing £80 per month for the container in which it is held.
- xi. The current situation is causing stress for both the Applicant and his wife and also his son and partner.

The Respondent made the following oral representations: –

- i. She continues to call the local authority every Friday. However no properties are available as of yet. She has been told that her application for accommodation will not advance without an eviction order being granted. Once the relevant paperwork is available progress can be made.
- ii. The Respondent has looked at other options but it is difficult. She is having particular regard to the arrangements for her children's schooling and school transport for her autistic son.
- iii. She cannot afford accommodation in the private sector.

- iv. She is not in employment and receives some assistance in paying her rent. Her rent account is up to date.
- v. She offered no comment or criticism of the Applicant's current living arrangements.
- vi. Whilst the Respondent was shocked to be advised that she required to remove from the Property she understood the Applicant's intentions and that he needed somewhere else to go.
- vii. The problem for the Respondent is the size of the property that she requires and the availability of such property. She requires an additional two bedrooms. The local authority has assessed her as needing a five bed roomed property but she would accept four bedrooms.
- viii. She has an appointment with her local councillor to try and push her application along.

### **Findings in Fact**

The Tribunal made the following findings in fact –

- i. The Applicant is the proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of the PRT that commenced on 14 May 2021.
- iii. The rent payable in terms of the PRT was agreed to be £630 per calendar month.
- iv. On 14 November 2023 the Applicant's representative served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 7 February 2024 on the basis that the Applicant wishes to live in the Property.
- v. By letter dated 14 March 2024 the Applicant's representative served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The Applicant purchased the Property – a derelict ex-gospel hall – in 1999.
- vii. He substantially renovated the Property in 2011/12 in a manner that would suit his needs on later retirement.
- viii. The Applicant sold his family home at 74 Station Road, Caldercruix, Airdrie in November 2023 to downsize. That property had 5 bedrooms.
- ix. The proceeds of sale of 74 Station Road were £310,000 and were used to clear the mortgage thereon of £73,000 and also to clear the mortgage on the Property. By then the rent received in respect of the Property did not cover the monthly mortgage commitment.
- x. The Applicant and his wife are living in his son's home which he shares with his partner. That property has 3 bedrooms.
- xi. The Applicant's daughters have both now moved into their own homes.
- xii. The Applicant's belongings have been put into storage meantime.
- xiii. The Applicant first told the Respondent of his intention to move back into the Property in October 2022.
- xiv. The Respondent is a single mother with 5 children.
- xv. One of the Respondent's children has autism and an intellectual disability and for whom change is difficult. He attends an additional needs school and has school transport to take him there. Her other children attend a local school.
- xvi. The Respondent has lived in the Property for approximately 10 years. The Property is overcrowded. She needs an additional 2 bedrooms.
- xvii. The Respondent cannot afford to rent another property in the private sector.
- xviii. She does not require an adapted property.
- xix. Alternative accommodation is difficult to find.

- xx. The Respondent would accept a property with less bedrooms than she ideally requires.
- xxi. She has priority status with the local authority.
- xxii. She calls the local authority every week to see what properties are available.
- xxiii. The local authority cannot do anything until eviction paperwork is available from the Tribunal.
- xxiv. The situation the Respondent finds herself in is very stressful.
- xxv. The situation is not ideal but she makes it work and she would, ideally, prefer to remain there. Her parents live nearby. She is comfortable and happy as are her children.
- xxvi. There have been no issues with her tenancy. She pays her rent on time and her rent account is up to date.
- xxvii. She first heard that the Applicant wished to recover possession of the Property at a routine 6 monthly visit. She was shocked and the indication came out of the blue but she understood the Applicant's need to move into the Property.

### **Reasons for Decision**

The application proceeds on the basis of Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 which states:-

#### ***"4 Landlord intends to live in property***

*(1) It is an eviction ground that the landlord intends to live in the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months,*

*(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.*

*(3) References to the landlord in this paragraph—*

*(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,*

*(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.*

*(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention."*

There are no matters of factual dispute between the parties.

The Tribunal was satisfied that the Applicant and his wife intend to live in the Property as their only or principal home for at least 3 months. The Respondent did not challenge the Applicant's position in that regard.

The only issue for determination by the Tribunal concerned the reasonableness of issuing an eviction order. The Tribunal determined it was reasonable to do so. In reaching that conclusion the Tribunal took into account the following:-

- i. That the Respondent had first been advised of the Applicant's intention to move into the Property in October 2022, almost 2 years ago.
- ii. Both the Applicant and Respondent's current housing situations are unsatisfactory.
- iii. It is understandable that the Applicant wished to downsize from the 5 bedroom family home that he and his family previously occupied at 74 Station Road to the Property, now only needed for him and his wife.
- iv. The Applicant has a sentimental connection to the Property, being a place he attended as he grew up, and he bought and converted the Property in anticipation of living there in retirement.
- v. The Respondent has taken appropriate steps to find alternative accommodation. Had such accommodation become available to her from the local authority in all likelihood she would have moved from the Property, which is too small for her and her family's needs.
- vi. The Respondent had priority status with the local authority but has been told she will not be rehoused whilst she until an eviction order is granted.
- vii. There is no compelling reason offered by the Respondent as to why she needs to remain living in the Property.

Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure alternative accommodation for her family. Accordingly, the Tribunal determined that the order cannot be enforced before 3 February 2025.

### **Decision**

The Tribunal granted an eviction order against the Respondent in favour of the Applicant with execution of that order delayed until 3 February 2025.

### **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.**

Gillian Buchanan

**Legal Member/Chair**

**3 October 2024**  
**Date**