



**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/24/0999**

**Re: Property at Flat 1/1, 90 Quarry Street, Hamilton, South Lanarkshire, ML3 7AX (“the Property”)**

**Parties:**

**Mrs Marianne Jack, 8 James Wilson Place, Crossford, South Lanarkshire, ML8 5SG (“the Applicant”)**

**Ms Emma Paterson, Ms Anne Paterson, Flat 1/1, 90 Quarry Street, Hamilton, South Lanarkshire, ML3 7AX (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Tony Cain (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with enforcement of said order suspended until 31<sup>st</sup> January 2025.**

**Background**

1. By application to the Tribunal the Applicant sought an eviction order against the Respondents in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 3 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 3 October 2019 and 7 November 2019;

- (ii) Notice to Leave dated 24 August 2023 citing ground 3, together with proof of service on the Respondent by Sheriff Officers on 29 August 2023;
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Lanarkshire Council together with proof of service by Sheriff Officers on 8 February 2024;
  - (iv) Photographs of the property;
  - (v) Email from the Applicant confirming the scope of works required;
  - (vi) Proof of landlord registration; and
  - (vii) A written mandate from the Applicant authorising the Applicant's representative to act on her behalf, together with written consent from the joint owner for the application to proceed in the Applicant's sole name.
2. The Tribunal was also in receipt of the title sheet for the property which confirmed the Applicant to be the joint owner of the property along with Brian Jack.
  3. By Notice of Acceptance of Application dated 19 June 2024 a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 23 October 2024. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 19 September 2024 in accordance with Rule 17(2) of the Rules of Procedure.
  4. No written representations were received from the Respondents in advance of the Case Management Discussion.

### **Case Management Discussion**

5. The Case Management Discussion took place on 23 October 2024 by teleconference. The Applicant was represented by Ms Janice Murphy and was personally present. The Respondents were both present. Ms Emma Paterson confirmed that she would speak on behalf of both Respondents.
6. The Tribunal explained the purpose of the Case Management Discussion and the legal test to be applied under ground 3. The Tribunal then asked both parties to make submissions regarding the application.
7. Ms Murphy advised that the Applicant sought an eviction order. The property required a major refurbishment and the works could not be done with the Respondents in place. The repairing issues had been ongoing for a number of years, with the tenancy commencing in 2019. Ms Murphy confirmed that the property was located within an old tenement building. It required refurbishment both internally and externally. There had been water ingress over the years and ongoing repair issues. Ms Murphy advised that as recently as a few weeks ago some parts of the ceiling had fallen down. The internal condition of the property

was not up to living standards and it was a major health and safety issue. Ms Murphy confirmed that there had been some repairs done externally to the roof and the pointing, however nothing had been carried out internally. The Applicant required access to the property to complete the internal works which could take up to six months. The Applicant and the joint owner would be doing the works themselves. Ms Murphy provided further information regarding the Applicant's circumstances, advising that the family dynamic had changed. A family member had been diagnosed with a terminal illness which would likely require the Applicant to purchase a larger property or extend her current property to accommodate said family member. She would therefore need to sell the property to fund this.

8. In response to questions from the Tribunal Ms Murphy advised that the works that needed to be done included stripping back the plasterwork, damp proofing, new ceilings, flooring, a new bathroom and a new kitchen. The property was not in a good condition and would need to be fully stripped. This could not be done with the Respondents residing there. Ms Murphy advised that she understood the second Respondent did not keep good health and the state of the property was not helping her. Ms Murphy confirmed that the property had met the repairing standard when it was let in 2019 however it had deteriorated in recent years. There had been challenges in terms of getting communal works done, however the Applicant had responded timeously whenever there was a need for repairs or maintenance to be done. The Applicant had actively engaged with the other owners in the tenement to try and resolve the external issues. Ms Murphy advised that the property was a first floor flat. It had initially been thought that the water ingress was coming from above, however it transpired that it was in fact coming through the fabric of the building. Ms Murphy confirmed that the Applicant owned one other property which was vacant and on the market for sale.
9. Ms Paterson spoke on behalf of the Respondents. She confirmed that she and her mother, the second Respondent, had stayed in the property since 2019. The property seemed to be in fine condition when they first took up occupation. However there had subsequently been a lot of issues with disrepair after the Covid-19 pandemic. She gave an example of an intercom system which was planned but not completed, and bird faeces in the communal close that she had cleaned herself. Ms Paterson explained that her mother did not keep good health and her health had deteriorated recently. She was awaiting surgery. Ms Paterson explained that she and her mother did not wish to remain in the property. They agreed that it was not in a habitable condition. Her mother had applied with Hanover Housing for semi-sheltered accommodation and Ms Paterson herself was in the process of applying for a mortgage. The only issue was they required more time in order to secure alternative accommodation. Ms Paterson reiterated that the Respondents were not disputing that the property required a complete renovation. She had advised Hanover Housing of the application before the Tribunal.
10. In response to questions from the Tribunal Ms Paterson advised that she had been told by Hanover Housing that there was a points system in place in terms of housing allocation. A threat of homelessness may mean that Hanover could try and progress their application more quickly. The Tribunal advised that it could

consider a suspension of the enforcement of any eviction order if it considered this reasonable. Ms Paterson confirmed that the Respondents were not opposing the making of the order but would be looking for a suspension into the new year. Ms Paterson advised that she had not made a homelessness application to the local authority as the issue was where her mother was going to live. Her mother did not wish to remain in Hamilton and had decided to look for accommodation in Glasgow. Her mother needed to be in a place where she could receive care. If the Tribunal were to make an eviction order Ms Paterson confirmed that she would submit all of the information to Hanover Housing and they would see if her mother's application could be escalated.

11. Ms Murphy confirmed that the Applicant would not oppose a suspension of enforcement of any eviction order until the new year, despite concerns regarding the condition of the property. She fully understood the health issues and concerns of the Respondents, and could fully emphasise. Ms Murphy confirmed that her agency could assist the Respondents, either in sourcing another let or in the purchase of a property.
12. The Tribunal subsequently adjourned the Case Management Discussion to deliberate, at which point parties left the call. The Tribunal then resumed the teleconference and confirmed its decision.

### **Relevant Legislation**

13. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

#### ***1 - Meaning of private residential tenancy***

*1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

#### ***51 First-tier Tribunal's power to issue an eviction order***

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

(ii) three months after it begins if subsection (3A) applies,  
(iii) six months after it begins if neither subsection (3) nor (3A) applies.  
(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,  
(ii) three months after it begins if subsection (3C) applies,  
(iii) six months after it begins if neither subsection (3B) nor (3C) applies  
(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]  
(ii) that a member of the landlord's family intends to live in the let property, [ground 5]  
(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and  
(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

### **Schedule 3, Part 3**

*(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.*

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

*(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),*

*(b) the landlord is entitled to do so,*

*(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and*

*(d) 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)(a) includes (for example)—*

*(a) any planning permission which the intended refurbishment would require,*

*(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.*

### **Findings in Fact**

14. The parties entered into a Private Residential Tenancy Agreement in respect of the property dated 3 October 2019 and 7 November 2019.
15. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
16. On 29 August 2023 the Applicant delivered a Notice to Leave to the Respondents by Sheriff Officers.
17. The Notice to Leave cited ground 3 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 1 December 2023.
18. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
19. The Applicant intends to refurbish the property and is entitled to do so as a heritable proprietor of the property.
20. The property is in need of refurbishment. The Applicant intends to carry out extensive works including removing and replacing plasterwork, damp proofing,



replacing ceilings, replacing flooring, replacing the kitchen and replacing the bathroom.

21. It would be impracticable for the Respondents to remain in the property given the nature of the refurbishment intended by the Applicant.
22. The first Respondent is in the process of applying for a mortgage to purchase a property.
23. The second Respondent has applied for semi-sheltered housing with Hanover Housing. The second Respondent is in poor health and is awaiting surgery.

### **Reasons for Decision**

24. In reaching its decision on the application the Tribunal took into account the application paperwork and the verbal submissions from the parties at the Case Management Discussion. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties. It was clear that there were no issues in dispute that would require a hearing to be fixed, and there appeared to be broad agreement between the parties as to a way forward.
25. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 3 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.
26. The Tribunal accepted, based on the application paperwork and the submissions from Ms Murphy and Ms Paterson at the Case Management Discussion, that the Applicant was entitled to carry out a refurbishment of the property and intended to do so. The Tribunal was further satisfied that the nature of the works were extensive, and the Applicant would therefore require vacant possession in order to carry out the works. The Respondents did not dispute this.
27. The Tribunal then considered the question of reasonableness. The Tribunal accepted that the condition of the property was such that the Respondents did not wish to reside there any longer. Whilst the Tribunal had concerns regarding the second Respondent's health, the Tribunal also noted that Ms Paterson had confirmed that the Respondents were actively seeking rehousing. The first Respondent was in the process of applying for a mortgage and the second Respondent had applied for semi-sheltered accommodation. It was likely that the granting of an eviction order would assist with the latter, in terms of securing additional points for the second Respondent's application.
28. The Tribunal also took into account the Applicant's circumstances, noting that the refurbishment was necessary to assist her in dealing with a change in her family's circumstances whereby she would require to ultimately sell the property in order to fund the purchase of a new property, or an extension to her current

property, to accommodate a family member who was suffering with a terminal illness.

29. Taking the above factors into account, the Tribunal ultimately concluded that it would be reasonable to make an eviction order in the particular circumstances of this case. However, the Tribunal considered it would be reasonable to suspend the enforcement of the order until 31<sup>st</sup> January 2025, taking into account the second Respondent's health issues, in order to ensure that the Respondents had sufficient time to secure suitable alternative accommodation.
30. Accordingly the Tribunal concluded that ground 3 had been met and determined to make an eviction order.
31. The decision of the Tribunal was unanimous.

### **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.**

# Ruth O'Hare

**22 October 2024**

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**Legal Member/Chair**

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**Date**