

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/1819**

**Property at Flat 2/2 (also known as 51/4), 51 Causeyside Street, Paisley, PA1 1YN (“the Property”)**

**Parties:**

**Mr Azhar Shah, 38 Berwick Drive, Glasgow, G52 8EP (“the Applicant”)**

**Ms Alisha Arbab, Flat 2/2 (also known as 51/4), 51 Causeyside Street, Paisley, PA1 1YN (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant. The Tribunal also determined that they should order a delay in execution of the eviction order until 22 April 2025**

**Background**

- 1.** The Applicant seeks an eviction order in terms of Section 51 and Ground 1 of schedule 3 of the 2016 Act. A section 11 notice, tenancy agreement, Notice to leave and letter of engagement from a solicitor were submitted with the application.
- 2.** A copy of the application was served on the Respondent and the parties were notified that a CMD would take place by telephone conference call on 22 October 2024 at 10am.
- 3.** The CMD took place on 22 October 2024. The Applicant was represented by Mr Shafaatulla. The Respondent participated and was represented by Ms Cojocar. Prior to the CMD, the Respondent’s representative lodged a written

submission which stated that the application was opposed on the ground that the wrong notice period had been given in the Notice to leave– 3 months instead of 6.

## **Summary of Discussion**

4. Ms Cojocararu told the Tribunal that the Respondent does not wish to oppose the application. It is accepted that the notice period given in the Notice to leave is correct, as the extended notice periods which applied during the pandemic had expired and did not apply at the date of service of the Notice. She said that the Respondent wants to move from the property as there have been problems with the landlord. This has included an unlawful rent increase to £450. Although a valid rent increase notice was not issued, she has been paying the increased sum for 7 months at the request of the Applicant and this can be evidenced. Ms Cojocararu advised the Tribunal that the tenancy started when the Respondent was a student. She has now graduated and is working part time and hoping to secure full time work. She is married and her husband is in employment. There are no dependant children in the house. However, she and her husband are on a skilled worker visa and their immigration status means that they have no recourse to public funds and will not be provided with accommodation by the Local Authority if they become homeless. This has also made it more difficult for them to obtain alternative accommodation in the private sector. However, they are hopeful of obtaining accommodation in due course and are only seeking a delay in execution of the eviction order for six months to give them time to source a new property.
5. Mr Shafaatulla told the Tribunal that the Applicant has decided to sell the property for two reasons. The first is that the rent of £350 per month does not cover the Applicant's costs. The mortgage is £336, and the factoring charges are £100. There is therefore a shortfall, and the rent payments are often late. The second reason is that the interest only mortgage over the property is coming to an end in a couple of years and the property will have to be sold to repay the capital. The Tribunal was advised that the property is the Applicant's only rental property, although his wife also owns a property. The Applicant is in employment, but the monthly shortfall is not sustainable. Mr Shafaatulla said that a delay in enforcement of the order of three months would not be unreasonable but that six months is excessive as the property has to be made ready for sale, marketed and sold before the mortgage ends.

## **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property. She resides there with her husband.

8. The Respondent wants to move from the property and does not oppose the granting of an eviction order.
9. The Applicant wishes to sell the property as the interest only mortgage over it is due to end in two years' time.
10. The Respondent and her husband are not entitled to assistance from the Local Authority should they become homeless.
11. The Applicant served a Notice to leave on the Respondent on 15 January 2024

### **Reasons for Decision**

12. The application was submitted with a Notice to Leave dated 15 January together with a copy of an email to the Respondent which establishes that the Notice was sent to her on the same date. The Notice states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property.
13. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
14. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
15. Ground 1 of schedule 3 (as amended) states, " (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."
16. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Applicant intends to sell the property and that ground 1 is established.
17. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The Applicant intends to sell the property as the mortgage over the property is due to end in two years' time and the capital will require to be repaid.

- (b) The Respondent does not oppose the application and wants to move from the property.
  - (c) The Respondent and her husband are not entitled to assistance from the Local Authority should they become homeless. They are aware of this and still do not oppose the application.
18. The only factual matter in dispute relates to the rent. The Applicant claims that there is a shortfall between the rent and his outlays. This is denied by the Respondent who says that she can provide evidence that she has been paying £450 per month for the last 6 or 7 months. Neither party provided evidence to support their argument. The Tribunal therefore determined that they could not take this issue into account in assessing reasonableness but that a decision could still be made on the application without further enquiry.
19. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 1 has been established. For the reasons outlined in paragraph 17, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.
20. The Tribunal then considered whether to order a delay in execution of the eviction order in terms of Regulation 16A(d) of the Tribunal Procedure Rules 2017. This is not opposed in principle, only the length of the delay is in dispute. The Tribunal notes that the Applicant still has two years before he requires to repay his mortgage. On the other hand, the Respondent and her husband must find alternative accommodation in the private sector and have not yet done so. In the circumstances, the Tribunal is satisfied that a delay of six months from the date that the order is granted is not unreasonable.

## **Decision**

21. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

Josephine Bonnar

