



**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/24/2596**

**Re: Property at 90 Glenburn Gardens, Whitburn, Bathgate, EH47 8NN (“the Property”)**

**Parties:**

**Mr Anthony Carr, 16 Lambie Street, Whitburn, Bathgate, EH47 8NN (“the Applicant”)**

**Mr Callum Muir, Ms Audrey Muir, 90 Glenburn Gardens, Whitburn, Bathgate, EH47 8NN (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order, with enforcement of the order suspended until 3 January 2025**

**Background**

- 1 By application to the Tribunal dated 7 June 2024 the Applicant sought an eviction order against the Respondents under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-
  - (i) Copy Tenancy Agreements between the parties dated 21 May and 1 June 2008, 26 April 2021, 12 November 2021 and 4 April 2022;
  - (ii) Notice to Leave dated 14 February 2024, confirming that proceedings would not be raised any earlier than 11 May 2024 and proof of delivery to the Respondents by recorded delivery mail;

- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 of the application to West Lothian Council and proof of delivery by email;
  - (iv) Agency Contract for the sale of the property signed by the Applicant dated 6 June 2024;
- 2 The Tribunal was also in receipt of Title Sheet WLN54646 which confirmed the Applicant to be the registered owner of the property.
  - 3 By Notice of Acceptance of Application dated 28 June 2024 a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion on 1 November 2024. Notification of the Case Management Discussion was served upon the Respondents by Sheriff Officers in accordance with Rule 17(2) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). Both parties were invited to make written representations.
  - 4 No written representations were received from either party in advance of the Case Management Discussion.

### **Case Management Discussion**

- 5 The Case Management Discussion took place by teleconference on 1 November 2024. The Applicant was represented by Alexandra Wooley, Solicitor of Bannatyne Kirkwood France and Co. The Applicant himself was not in attendance. The Respondents were not present.
- 6 The Tribunal was in receipt of a certificate of service from Sheriff Officers confirming that the Respondents had been notified of the date and time of the Case Management Discussion, and had been provided with a copy of the application paperwork. The Tribunal was therefore satisfied that proper notification of the Case Management Discussion had been given to the Respondents under Rule 17(2) of the Rules and determined to proceed in their absence. The Tribunal proceeded to ask Miss Wooley to make submissions regarding the application.
- 7 Miss Wooley confirmed that the Applicant sought an eviction order under ground 1 of Schedule 3. He intended to sell the property. He had recently received a diagnosis of Alzheimer’s disease and was in his late 80s. The Applicant therefore anticipated that his health was going to decline in the near future and he would likely require to move into a care home. That being the case he wanted to remove himself from the rental market and sell the property whilst he still had capacity to do so in order to release capital to meet care home fees.
- 8 The Tribunal asked about the Respondents’ circumstances. Miss Wooley advised that they were both believed to be in employment. It was understood that Mr Muir was self employed as a painter and decorator. Mrs Muir had been employed as a carer with the local authority but Miss Wooley was unsure if that

was still the case. The Respondents looked after their granddaughter who was approximately 17 or 18 years old and suffered from cerebral palsy.

- 9 The Tribunal asked Miss Wooley to clarify the position regarding the private residential tenancy, noting that the property had initially been let to the Respondents under a short assured tenancy in 2008. Miss Wooley confirmed that there had been a number of lease extensions. The Applicant had tried to continue the short assured tenancy. Miss Wooley made reference to the 2016 Act which provided that any tenancy entered into after the commencement date of 1 December 2017 would be a private residential tenancy. She also referenced the savings provisions which allowed for an existing short assured tenancy to be extended so long as the new contractual tenancy commenced on or at the ish date. The first extension signed by the parties commenced on 1<sup>st</sup> April 2021, which was not an ish date. The tenancy therefore converted to a private residential tenancy on that date.
- 10 The Tribunal asked Miss Wooley if there had been any engagement from the Respondents regarding the application. Miss Wooley confirmed that they had not been in touch following the service of the notice to leave or the service of the application paperwork. Miss Wooley also explained that the property was not subject to a mortgage. It was the only property owned by the Applicant and his last major asset. He currently resided in a house owned by his son and his son's wife.
- 11 The Tribunal asked whether the Applicant would object to a delay in the enforcement of the eviction order, having regard to the upcoming festive period. Miss Wooley stated that there would likely be a natural delay in any event due to the lack of availability of sheriff officers over the festive period. However, she was content to leave that matter in the hands of the Tribunal.
- 12 The Tribunal held a short adjournment to deliberate, during which time Miss Wooley left the call, before resuming the Case Management Discussion and confirming 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 and the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017:-

### ***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 1**

#### *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, 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.*

### **Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017**

#### **6. Savings provision**

*Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—*

*(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;*

*(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and*

*(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).*

## Findings in Fact

- 14 The Applicant let the property to the Respondents under a short assured tenancy agreement dated 21 May and 1 June 2008. The terms of the tenancy was from 1 June 2008 to 1 June 2009.
- 15 The parties signed a new tenancy agreement dated 26 April 2021, which commenced on 1 April 2021.
- 16 The 1 April 2021 is not an ish date of the said short assured tenancy agreement.
- 17 The tenancy created by the new tenancy agreement was a private residential tenancy as defined by section 1 of the 2016 Act.
- 18 On 14 February 2021, the Applicant sent a notice to leave to the Respondents by recorded delivery mail.
- 19 The notice to leave cited ground 1 and confirmed that the Applicant would not submit an application to the Tribunal for an eviction order any earlier than 4 April 2024.
- 20 The notice to leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 21 The Applicant has title to sell the property.
- 22 The Applicant requires to sell the property whilst he has capacity to do so. The Applicant has been diagnosed with Alzheimer's disease. The Applicant will likely require to enter a care home as his condition deteriorates.
- 23 The Applicant requires the capital from the sale of the property to meet any care home costs.
- 24 The Applicant is in his late 80s.
- 25 The Applicant has signed a contract for the sale of the property once he has obtained vacant possession.
- 26 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 27 The Respondents are both in employment.
- 28 The Respondents have caring responsibilities for their teenage granddaughter who has cerebral palsy.



## Reasons for Decision

- 29 Having considered the application paperwork and Miss Wooley's submissions at the Case Management Discussion the Tribunal was satisfied that the tenancy between the parties had been converted to a private residential tenancy as at 1 April 2024. The Tribunal was also satisfied that a notice to leave had been properly served upon the Respondents which confirmed the Applicant's intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The notice to leave was in the prescribed form and the Tribunal could therefore entertain the application.
- 30 The Tribunal then considered whether ground 1 had been met. The Tribunal was satisfied that it could make relevant findings in fact based on the application paperwork and the submissions from Miss Wooley at the Case Management Discussion. The Respondents had not made any written representations, nor had they attended the Case Management Discussion, despite having been given the opportunity to do so. The Tribunal considered however that it could reach a decision on the application based on the information provided by the Applicant.
- 31 The Tribunal therefore accepted that the Applicant intended to sell the property, having signed a contract of sale with a relevant agent, a copy of which was before the Tribunal. The Tribunal also accepted that he intended to do so within three months of an eviction order being granted.
- 32 The Tribunal thereafter considered the reasonableness of making an eviction order.
- 33 In terms of factors relevant to the assessment of reasonableness, the Tribunal took into account the fact that the Applicant was an elderly man who had been diagnosed with Alzheimer's disease and required to sell the property whilst he still had capacity to do so. The Tribunal noted that this was the only property he owned, and he would likely face care home costs as his condition deteriorated. He therefore required the capital from the property to put towards said costs.
- 34 The Tribunal also took into account the Respondent's circumstances, noting that they were both believed to be in employment, with caring responsibilities for their granddaughter. On the basis that they had not attended the Case Management Discussion the Tribunal had been unable to obtain information regarding their options for rehousing, and they had not communicated this to the Applicant.
- 35 Accordingly having regard to the circumstances of this particular case the Tribunal considered that the balance of reasonableness weighed in favour of making an eviction order. The Tribunal considered that the prejudice to the

Applicant were he not able to sell the property in order to mitigate against any further financial loss outweighed the prejudice to the Respondents were an eviction order to be granted. Whilst the Tribunal had concerns about the vulnerability of the Respondents' granddaughter, the Respondents had not sought to lodge any opposition to the making of an eviction order, and had not put anything forward to contradict the information provided by the Applicant.

36 The Tribunal therefore determined to make an eviction order. However, taking into account the upcoming festive period, and having regard to the health of the Respondents' granddaughter, the Tribunal determined to suspend the enforcement of said order until 3 January 2025.

37 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

**1 November 2024**

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**Legal Member/Chair**

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**Date**