



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland)Act 2016**

**Chamber Ref: FTS/HPC/EV/24/1751**

**Re: Property at Flat 1-1, 6 Montgomery Ave, Paisley, PA3 4PX (“the Property”)**

**Parties:**

**Mr David Farley, 17 Daisy Dormer Court, London, SW9 8DW (“the Applicant”)**

**Miss Charlene McGrath, Flat 1-1, 6 Montgomery Ave, Paisley, PA3 4PX (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction is Granted in favour of the Applicant against the Respondent.**

**Background**

1. By application to the Tribunal dated 15 April 2024 the Applicant sought an eviction order against the Respondent under grounds 1 and 1A of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”).

2. In support of the application the Applicant submitted the following:-

- (i) Copy Private Residential Tenancy Agreement (PRT) between the parties;
- (ii) Notice to Leave dated 15 January 2024, confirming that proceedings would not be raised any earlier than 11 April 2024 and email to the Respondent with said Notice to Leave of that same date;
- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Renfrewshire Council and proof of delivery by email;
- (iv) Rent ledgers dated 12 April 2024 and 16 May 2024
- (v) Bank statements for the Applicant for 2024
- (vi) Letter from the Applicant’s mortgage provider dated 2 April 2024

(vii) Rent penalty Notice from Renfrewshire Council dated 1 May 2024  
(viii) Confirmation from Ritehome Ltd that they have been engaged by the Applicant to sell the Property.

3. The Tribunal was also in receipt of the Title Sheet which confirmed the Applicant to be the registered owner of the property.

4. By Notice of Acceptance of application dated 25 June 2024, a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application.

5. The application was therefore referred to a Case Management Discussion; to take place on 30 October 2024 by teleconference at 2pm. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017.

### **The Case Management Discussion**

6. At the Case Management Discussion ("CMD"), which took place by telephone conference on 30 October 2024, the Applicant was not present. He was represented by Mr Robert Nixon of Ritehome Ltd. The Respondent was present.

7. The Respondent had not lodged any written representations.

8. The Respondent said that she lived at the Property together with her 5 children aged 13, 11, 9, 4 years old and 12 weeks old. She is unemployed and in receipt of Universal Credit. She said that she was opposed to the Order for Eviction. She said that she had not been paying the rent as there were various repairs issues. She said that there was dampness throughout; there were issues of the kitchen cupboard doors falling off and being unsafe. She had intimated the position to the Applicant and had been withholding rent. She has lived at the Property for 9 years. The PRT was signed with the Applicant's new representatives as the previous letting agents had vanished with records and money due to the Applicant from rent paid in advance.

9. Mr Nixon said that he had met with the Respondent when his company took over the management of the Applicant's lease of the Property. He said that the previous agent had not paid the Applicant any rent for a two year period so the landlord had already lost out on 2 years income. The Respondent had agreed to enter into a new PRT and she had started to pay rent from March 2023 up until December 2023.

10. He said that the Applicant was seeking an Order for Eviction based on the fact that he wished to sell the Property, and that he wished to sell to alleviate financial hardship. Notice to Leave was served on these grounds, and the Respondent had then stopped paying rent.

11. He referred to the fact that there are now arrears of rent outstanding of £5000 as at October 2024. The Applicant has provided confirmation from the mortgage company that the outstanding mortgage for the Property amounts to £49,789. A temporary concession on the mortgage account was agreed to by the mortgage

company in light of the Applicant's financial circumstances. Due to his strained financial circumstances, the Applicant had failed to renew his landlord registration and a penalty notice over the Property was in place from 1 May 2024 until this was revoked on 8 July 2024. The Applicant is without work. He claims Housing Benefit and Universal Credit. He manages on occasion some ad hoc work with a recruitment agency. He does not own any other properties. Mr Nixon said that once vacant possession is obtained, that his company will organise for a home report to be carried out. At this stage there would be no merit in having a home report carried out as it would need to be updated in 3 months time. The estimated value of the property is £50,000 so the applicant has no guarantee that sale will even clear the outstanding mortgage after all costs taken into account.

12. The Respondent did not dispute that the Applicant intends to sell the Property. She did not dispute that the Applicant intends to sell the Property to alleviate financial hardship. She said that she would have left the Property by now if anyone could house her, but that she requires a property with 5 bedrooms. Her 4 year old child has autism and requires a separate room. She has tried everything and is waiting on being rehoused currently, but there are no properties big enough to accommodate her family. She was able to name approximately 5 or 6 housing agencies with whom she had registered, as well as Renfrewshire Council. She is in dialogue with the local authority homeless team.

### **Findings in Fact**

13. The Applicant is the heritable proprietor of the Property.

14. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 27 May 2023.

15. The rent payable in terms of the PRT is £500 per calendar month.

16. On 15 January 2024, the Applicant served on the Respondent by email a Notice to Leave dated 15 January 2024, requiring the Respondent remove from the Property by 11 April 2024. The Notice to Leave was served on the basis that the Applicant requires to sell the Property, and he requires to sell the Property to alleviate financial hardship.

17. The Applicant has served on Renfrewshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

18. The Respondent is still in occupation of the Property.

19. The Respondent has not made any rent payments since December 2023.

20. The Applicant has title to sell the Property.

21. The Applicant has instructed Ritemove Ltd to sell the Property.

22. The Applicant intends to conclude the sale of the property within three months of the Respondent ceasing to occupy.

23. The Applicant is currently unemployed and in receipt of Universal Credit. He has an outstanding mortgage of £49,789.21. He is in strained financial circumstances. He was served with a rent penalty notice by Renfrewshire Council on 17 April 2024 which prevented rent being paid for the period 1 May 2024 until the penalty notice was revoked on 8 July 2024.

24. The Respondent is unemployed and in receipt of Universal Credit. She resides at the Property together with her 5 children aged 13, 11, 9 and 4 years of age and her baby who is 12 weeks old.

### **Reasons for Decision**

25. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1 and 1A of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.

26. The application proceeds upon ground 1 and 1 A of Schedule 3 of the 2016 Act. Ground 1 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.

(3) Evidence tending to show that the landlord has the intention mentioned in subparagraph (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.”

Ground 1A states ;-

(1)It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.

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

(a)the landlord—

(i)is entitled to sell the let property,

(ii)is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(iii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(e) 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, and

(f) an affidavit stating that the landlord has that intention. ]

27. In respect of ground 1, The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof. Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon both written and verbal confirmation from Mr Robert Nixon Managing Director of Ritehome Ltd that they have been engaged to sell the Property. The Tribunal accepts this evidence as sufficient to meet the terms of sub-paragraph 2(b).

28. The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal accepted that in assessing whether an eviction order is reasonable it must consider and weigh all available facts relevant to that decision, and that whilst the landlord's intention may be reasonable that did not necessarily mean that it would be reasonable to make an eviction order. The property rights of a landlord should not be given primacy over the occupancy rights of a tenant, and vice versa.

29. In this case the Respondent accepts the position that the Applicant does indeed wish to sell the Property, and that he intends to do so to alleviate financial hardship. She has made arrangements to register for rehousing with various housing agencies and spoken to the local authority homeless team. She has accepted that the Applicant has received no rent from her since December 2023. In the circumstances the Tribunal finds it reasonable that an order for eviction is granted. The Tribunal determined that it is reasonable to grant an eviction order having regard to the Applicant's own strained financial circumstances. He is in receipt of Universal Credit.

He has been struggling to meet the mortgage over the Property due to a lack of rent being paid. He is concerned that he may himself face repossession proceedings. In the circumstances, the Tribunal granted an eviction order in favour of the Applicant. The Tribunal in reaching its decision took into account the application and written representations from the Applicant together with the submissions and evidence heard at the Case Management Discussion. The Tribunal gave careful consideration to the positions set out on both sides.

30. With regard to Ground 1A the Tribunal accept for the above reasons that the Applicant is in financial hardship and requires to sell the Property to alleviate financial hardship.

### **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.**

Yvonne McKenna

Yvonne McKenna

Legal Member/Chair

30 October 2024

Date