



**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/24/2628**

**Re: Property at 26 Bellevue Street, Dumfries, DG1 3EJ (“the Property”)**

**Parties:**

**Kamzara Properties LTD, 25 Kirkland Road, Dumfries, DG1 4EZ (“the Applicant”)**

**Mr Alex Carter, 26 Bellevue Street, Dumfries, DG1 3EJ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Nick Allan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.**

**Background**

1. On 10<sup>th</sup> June 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 15<sup>th</sup> December 2022 and a rent of £550 per month;
  - ii. Copy Notice to Leave dated 13<sup>th</sup> March 2024;
  - iii. Proof of service of the Notice to Leave;
  - iv. Section 11 Notice and proof of service;
  - v. Letter from Carey Hughes, Solicitors, dated 4<sup>th</sup> July 2024 regarding sale of the property.

3. The Application was served on the Respondent by Sheriff Officers on 2<sup>nd</sup> October 2024.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Millar of GM Thomson & Company, Letting Agents. The Respondent dialled in and represented himself.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Miss Millar sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She said that the Applicant intended to sell the property within three months of the Respondent vacating it. She said that it was already on the market. She said that the Applicant wished to sell the property as it was no longer financially viable to rent it out. The Applicant only had one rental property.
7. The Respondent said that he had contacted the Homelessness Department of the local authority. He had been told that there were no properties currently available to meet the needs of his family. He did appreciate that he would need to move out, but rents locally had increased and he was finding it difficult to find somewhere.
8. The Tribunal confirmed that they were satisfied that the ground had been established but if the order was opposed on reasonableness a Hearing would need to be fixed. The Respondent said the situation was causing anxiety for him and his son as they did not know what would happen.
9. After discussion about further procedure the parties agreed that the order should be granted, but should be suspended until 20<sup>th</sup> January 2025 to allow the Respondent to find another property and to ensure that he did not have to leave before the Christmas period.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 15<sup>th</sup> December 2022;
- c. A Notice To Leave, dated 13<sup>th</sup> March 2024, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 2<sup>nd</sup> October 2024;

- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;

## Reasons for Decision

10. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

### **Private residential tenancies: discretionary eviction grounds**

*(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.*

*(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.*

*(3)In schedule 3 (eviction grounds)—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for “must” substitute “may”,*

(ii) the words from “the landlord” to “3 months” become paragraph (a),

(iii) after paragraph (a) insert “, and

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

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “home” become paragraph (a),

(iii) after paragraph (a) insert “, and

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

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g) in paragraph 8 (not an employee)—

(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii) for sub-paragraph (2)(c) substitute—

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—*

*“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.*

11. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the letter from Carey Hughes and the submissions by Miss Millar. The Tribunal decided that it was reasonable to grant the order as the parties agreed that it should be granted and suspended until 20<sup>th</sup> January 2024.

## **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.**

Alison Kelly

**1<sup>st</sup> November**

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**Legal Member/Chair**

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**Date**