



**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/24/2486**

**Re: Property at 5 Dailly Road, Maybole, South Ayrshire, KA19 7AX (“the Property”)**

**Parties:**

**Brian Robertson, Lynn Robertson, 7 McAdam Way, Maybole, KA19 8FD (“the Applicant”)**

**Gavin Crawford, 5 Dailly Road, Maybole, South Ayrshire, KA19 7AX (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

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

**Background**

- 1 By application to the Tribunal dated 31 May 2024 the Applicant sought an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). In support of the application the Applicant submitted:-
  - (a) Private residential tenancy agreement dated 25 April 2019.
  - (b) Notice to leave dated 29 January 2024 together with proof of service by email.
  - (c) Notice to leave dated 13 May 2024 together with proof of delivery by email.
  - (d) Copy letter from the joint owner Lynn Robertson authorising the application to proceed in the sole name of the Applicant.

- (e) Section 11 notice to South Ayrshire Council together with proof of delivery by email.
  - (f) Copy letter from the Applicant confirming their intention to sell the property.
- 2 The Tribunal was also in receipt of Land Certificate AYR93176 which confirmed the Applicant as the registered owner of the property.
  - 3 By Notice of Acceptance of Application dated 17 July 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion (“CMD”) was therefore assigned for the 25 November 2024 to take place by teleconference. Notification was given to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by Sheriff Officers.

### **Case Management Discussion**

- 4 The CMD took place on 25 November 2024. The Applicant was represented by Ms Alexandra Wooley, Solicitor of Bannatyne Kirkwood France and Co. The Respondent was also in attendance.
- 5 The Tribunal explained the purpose of the CMD and the legal test to be applied. Parties were invited to make written submissions regarding the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
- 6 Ms Wooley addressed the Tribunal on behalf of the Applicant. The application pertained to a private residential tenancy which commenced in May 2019. She pointed out that the Applicant had served two notices to leave on the Respondent. The first was sent on 29 January 2024, and expired on 24 April 2024. Upon expiry of the notice to leave the Applicant sought legal advice on how to recover the property. It was noted at that point that the notice to leave did not contain the date of service and part 3 was missing details. The Applicant was therefore advised to send a second notice to leave to the Respondent to protect his position. The second notice to leave was emailed to the Respondent and expired on 8 August 2024. The application had therefore been submitted prior to the expiry of the second notice to leave. However the Applicant sought the Tribunal’s permission for the application to proceed. It was reasonable in the particular circumstances of this case. The Respondent had been made aware of the Applicant’s intentions to sell the property in terms of the first notice to leave. He had been given the statutory period of notice. The second notice to leave had since expired as at the date of the CMD.
- 7 Ms Wooley confirmed that the Applicant wished to sell the property at the earliest opportunity. They were approaching retirement and wished to release the capital from the property to fund this. This was the only property that the Applicant rented out. It had no mortgage. In order to maximise the capital from the property the Applicant required vacant possession so that he could achieve the greatest value. Ms Wooley explained that the Applicant wished to offer the property to the local authority via its buyback scheme. He had approached the

local authority to discuss this however had been firmly told that the local authority would not entertain negotiations until the property was vacant. Ms Wooley pointed out that, in the event of an eviction order being granted, the local authority would have an obligation to provide emergency accommodation to the Respondent.

- 8 The Tribunal proceeded to hear submissions from the Respondent. He confirmed that he had sought advice from Shelter and the Citizens Advice Bureau upon receiving the first notice to leave. He was told to ignore the notice as it was invalid due to not being dated. He had therefore remained in the property. The Respondent explained that he had not vacated the property as he did not have anywhere to go. He advised that due to previous dealings with the local authority he believed he would not be rehoused. He was therefore reliant upon the private sector which was quite difficult with the budget he had available. The Respondent pointed out that the application had been submitted prior to the expiry of the second notice period.
- 9 The Respondent explained that he was not trying to make things difficult for the Applicant, he simply required to obtain another property. He did not have any family in the area with whom he could stay with. He worked locally and staying with his closest family would involve a 100 mile commute. There were few properties within the budget he had available. He had spoken with letting agents and the Applicant's agent had advised that they would let him know if anything came on their books. The Respondent confirmed that he resided alone. He did not have any dependents. He clarified that he had a previous tenancy with the local authority when he was younger which had led him being banned from rehousing. The Respondent advised that he had only received the Tribunal paperwork the week prior to the CMD which had left him little time to prepare. He was not trying to create difficulties for the Applicant, he did not want things to reach this stage and he was doing everything he could to find another property within his budget. In response to questions from the Tribunal the Respondent explained that he could not give any timescale for removing from the property so could not comment on a possible suspension of the execution of the eviction order, were the Tribunal minded to make it.
- 10 Ms Wooley advised, with regard to a potential suspension of the order, that she did not have instructions on this point. It was the Applicant's intention to recover possession of the property at the earliest possible opportunity.

### **Relevant Legislation**

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

#### ***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.*

### **Findings in Fact and Law**

- 12 The Applicant and Respondent entered into a tenancy agreement which commenced on 3 May 2019.
- 13 The tenancy was a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 The tenancy agreement provides that any communication under the terms of the lease will be by email.
- 15 On 29 January 2024 the Applicant emailed a notice to leave to the Respondent, to the email address stated in the tenancy agreement. The notice to leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 24 April 2024. The notice was undated with part 3 incomplete.
- 16 On 14 May 2024 the Applicant emailed a second notice to leave to the Respondent to the email address stated in the tenancy agreement. The notice to leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 8 August 2024.

- 17 The Applicant is the registered owner of the property along with his wife Lynn Robertson.
- 18 The Applicant requires to sell the property in order to release capital and fund his retirement.
- 19 The property does not have a mortgage in place. The property is the only rental property owned by the Applicant and his wife.
- 20 The Applicant wishes to sell the property to the local authority via their buyback scheme. The local authority will not entertain negotiations to purchase the property until such time as the Applicant has vacant possession.
- 21 The Respondent resides in the property alone. The Respondent has no dependents. The Respondent is employed in the local area.
- 22 The Respondent has no family or friends in the locality that he could stay with.
- 23 The Respondent has been actively looking for another rental property. It is the Respondent's belief that the local authority will not offer him accommodation due to issues with a previous tenancy.

### **Reasons for Decision**

- 24 The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be contrary to the interests of the parties. Based on the submissions made by the parties at the CMD the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed.
- 25 The Tribunal considered the position regarding the notices to leave. The Tribunal noted that the first notice to leave was largely complete, with the only defects being the fact that it was undated and there were details missing in part 3. Otherwise it was clear from reading the notice as to the landlord's intention. The Tribunal therefore accepted that the Respondent would have been aware upon receipt of the notice in January of the Applicant's plans to sell the property and his intention to submit an application to the Tribunal. On that basis the Tribunal determined that it would be reasonable to allow the application to be entertained under section 52(4) of the 2016 Act despite the fact that the period of notice in the second notice to leave had not yet expired when the application was submitted. It had now been approximately 10 months since the Applicant had first made the Respondent aware of his intentions.
- 26 The Tribunal then considered whether ground 1 had been met. The Tribunal was satisfied that it could make relevant findings in fact in this regard based on the application paperwork and the submissions from the parties at the CMD.



- 27 The Tribunal therefore accepted that the Applicant intended to sell the property and had title to do so. The Tribunal also accepted that he intended to do so within three months of an eviction order being granted. The Respondent had not disputed his intention in this regard.
- 28 The Tribunal thereafter considered the reasonableness of making an eviction order.
- 29 In terms of factors relevant to the assessment of reasonableness, the Tribunal took into account the fact that the Applicant, as the registered owner of the property, was entitled to sell the property if he so wished. The Respondent had first been advised of the Applicant's intention in January 2024, providing him with ample notice. The Tribunal gave significant weight to this. The Tribunal also gave significant weight to the fact the Applicant required the funds from the sale of the property in order to fund his retirement.
- 30 The Tribunal also gave weight to the fact that the Respondent was a single male who resided alone. He had not disclosed any medical conditions that would place him at particular risk were an eviction order to be granted, and there were no young dependents who would be impacted.
- 31 The Respondent had indicated that he had only become aware of the Tribunal application the week prior to the CMD. However the Tribunal was in receipt of a certificate of service from Sheriff Officers which confirmed that the application paperwork had been delivered to the property on 17<sup>th</sup> October 2024. The Tribunal therefore found it difficult to believe that he had only received the paperwork in recent days. The Tribunal also noted that he had previously had the benefit of advice from Shelter and the Citizens Advice Bureau, and he had been actively seeking alternative accommodation. He had stated that he was in employment, and the Tribunal considered that he would have the means to fund another private tenancy, albeit the Tribunal noted the challenges he had outlined regarding his budget for this. Based on its own knowledge, the Tribunal also found it difficult to accept that that the local authority would not have any obligation to provide the Respondent with advice and assistance were an eviction order to be granted, having regard to the nature of the application, and the Respondent is encouraged to have further discussions with them on this point.
- 32 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.
- 33 The Tribunal therefore determined to make an eviction order. However, taking into account the Respondent's requirement to obtain alternative accommodation, the Tribunal determined to suspend the execution of said order until 31<sup>st</sup> January 2025.

34 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.**

# R O'Hare

**25 November 2024**

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**Legal Member/Chair**

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**Date**