



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/24/3244

Re: Property at 10 Murdochs Wynd, Elgin, IV30 1TW (“the Property”)

Parties:

Mr Douglas Pirie, Mrs Gillian Pirie, 1 Bankton Glade, Livingston, West Lothian, EH54 9DG (“the Applicants”)

Miss Claire Cruickshank, Mr Paul Fyvie, 10 Murdochs Wynd, Elgin, IV30 1TW (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- **Background**
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of the Applicants’ intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- **Case Management Discussion**
 2. A Case Management Discussion (“CMD”) took place on 10 January 2025 by conference call. The first-named Applicant, Mr Pirie, was present and

accompanied by his letting agent, Mr Beck. The Respondents were personally present and represented themselves.

3. The Applicant moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 21 October 2022. The Applicants intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondents on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 18 April 2024. The Respondents had not vacated and continued to reside in the Property.
4. The Applicant submitted that they required to sell the Property in order that they could fund the purchase of an alternative property for their daughter, who is studying in Aberdeen. Their daughter is disabled and uses a wheelchair. Their daughter requires new accommodation from the summer onwards (when she vacates her adapted university supplied accommodation) and said new accommodation requires to be suitable for her medical needs and will likely require to be adapted in some way. The Applicants wish to encourage their daughter's independence and assist her in being able to live as normal life as possible in Aberdeen. It was submitted that they had no alternative funding available. There were medical bills to pay and specialist equipment had to be purchased. The Applicant submitted that they had incurred significant debts already and needed to release the equity in the Property. It was submitted that the Applicants were both in employment and would need to take out another mortgage to fund the purchase of the property for their daughter's use. The Applicant stressed that he was sorry for having to require the removal of the Respondents from the Property in order to sell, but they had no other options available to them.
5. The Respondents submitted that the first-named Respondent's son lived in the Property with them. He is autistic and has ADHD. He needs his own bedroom and regular routine. They have been looking for another three bedroom property but have not been able to find anything locally that they can afford. They do not wish to move their son to a different school as he is happy where he is and settled. They have spoken with the local authority and local housing associations and are on the local authority's waiting list, but do not have many housing points. The second-named Respondent has two daughters (aged 11 and 13 years) who come to stay every second week from Friday-Monday and they need a bedroom, which is why they require a three bedroom property. They live in Aberdeen. The Respondents submitted that they had been advised by the local authority to go online and apply for properties but there hadn't been anywhere suitable come available yet. The second-named Respondent works at Baxters and starts his shift at 4am, and the bus stop that he uses to get to work is right next to the Property. The first-named Respondent works at the local library café and can walk there after dropping their son off at school nearby. The Respondents submitted that they cannot afford another private let as the rents were much higher than what they currently pay and it would take them significant time to save up to be able to do so.

6. The Tribunal adjourned the CMD on two occasions to discuss the submissions made and to identify further questions to be asked of the parties.

7. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave by recorded delivery
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Letter from Cluny Estate Agents confirming instruction re appraisal of the Property for marketing for sale

- Findings in Fact

8. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 21 October 2022;
- (ii) The Applicants are the heritable proprietor of the Property;
- (iii) The Applicants are entitled to sell the Property;
- (iv) The Applicants have served a Notice to Leave on the Respondents on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (v) The Applicants have provided a letter of engagement from an estate agent regarding the marketing of the Property.

- Reasons for Decision

9. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met, namely that the Applicants intend to sell the Property and intends to do so within 3 months of the Respondents ceasing to occupy it. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

10. The Tribunal was also satisfied, in weighing up the circumstances of each of the parties, that it was reasonable to grant the order sought. The Tribunal had considerable sympathy with all parties, and noted that the circumstances of each were difficult. The Tribunal noted that the Respondents' son had medical needs and which could be exacerbated by a move to another property and/or school. However, the Tribunal was satisfied that whilst this may be difficult, with appropriate help and professional support, this could be managed. The Tribunal noted that the Applicants required the sale of the Property in order to be able to assist their disabled daughter live independently in Aberdeen and continue her studies, and that their current residence in West Lothian was far away and therefore the daughter moving home and commuting would not be an option. The Applicants appeared to have no other options available to them. Whilst the tribunal had some sympathy with the Respondents position and noted that the current Property appeared to be suitable to theirs and their son's current needs,

on balance, the Tribunal was satisfied that given the Applicants having no alternative option to be able to assist their disabled daughter, that there would be more harm caused if the order was not granted, than if it was. It is hoped that in doing so, the local authority will take reasonable steps to assist the Respondents in obtaining suitable alternative accommodation. In order to alleviate the immediate pressure on the Respondents, the Tribunal considered it appropriate to delay enforcement of the Order until 14 March 2025 in order to give them further time to make arrangements. The Tribunal was satisfied that this would not, on balance, cause significant detriment to the Applicants.

- Decision

11. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Legal Member/Chair

Date: 10 January 2025