

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/2235**

**Re: Property at 17A Holehouse Road, Largs, KA30 9JH (“the Property”)**

**Parties:**

**Mr Stephen Cassidy, Mrs Angela Cassidy, 44 Park Circus, Ayr, KA7 2DL (“the Applicant”)**

**Mr Maxime Tokou, 17A Holehouse Road, Largs, KA30 9JH (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Melanie Booth (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 for a period of two months**

**Background**

- 1 By application to the Tribunal dated 16 May 2024 the Applicants 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 Applicants submitted:-
  - (a) Private residential tenancy agreement between the parties dated 4 August 2022;
  - (b) Notice to leave dated 20 September 2023 together with proof of service by email;
  - (c) Section 11 notice to North Ayrshire Council together with proof of service by email;
  - (d) Copy letter from the Applicants authorising Glow Lettings to represent them in the proceedings before the Tribunal; and

- (e) Copy sales agreement between the Applicants and Glow Lettings dated 11 June 2024 pertaining to the sale of the property.
- 2 The Tribunal was also in receipt of Land Certificate AYR215752 which confirmed the Applicants as the registered owners of the property.
  - 3 By Notice of Acceptance of Application dated 12 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 20 December 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 on 15 November 2024. Both parties were invited to make written representations.
  - 4 On 12 December 2024 the Tribunal received an email from Mr Alister Meek of CHAP, an advice agency. Mr Meek confirmed that he would be representing the Respondent at the CMD. The Respondent did not object to the application for an eviction order but was seeking an extension of two months to allow time to source alternative accommodation.
  - 5 On 17 December 2024 the Tribunal received an email from the Applicants representative, Glow Lettings and Sales, confirming that the Applicants would agree to a two month extension.

### **Case Management Discussion**

- 6 The CMD took place on 20 December 2024. Ms Robyn Cambridge of Glow Lettings and Sales represented the Applicants who were not present. Mr Alister Meek of CHAP represented the Respondent who was also not in attendance.
- 7 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.
- 8 Ms Cambridge advised that the Applicants had been landlords for 23 years. They had a portfolio of properties. However, the Applicants were now in their mid-70s and Mr Cassidy was in poor health, having suffered a stroke the year before. He was now on the mend but no longer able to take an active role in the rental properties. He had previously taken the lead and had been very hands on. Ms Cambridge gave the example of Mr Cassidy carrying out repairs to the properties himself. Since suffering his stroke Mrs Cassidy had taken over but she was struggling. The Applicants had therefore taken the decision to sell their rental portfolio. The other properties had since been sold. This was the only one still to go on the market.
- 9 Mr Meek confirmed that the Respondent did not oppose the eviction order. He had been looking to source another private let but was having a bit of difficulty, hence the request for a two month extension. Mr Meek explained that the

Respondent also had a case open with the local authority therefore if he was unable to find a property in the private sector it was likely that the local authority would step in and provide accommodation, at least on a temporary basis. Mr Meek confirmed that the Respondent resided in the property with his wife and two children, who were aged 14 and 18. There were no health issues or vulnerabilities on the part of the Respondent's family that gave cause for concern.

- 10 The Tribunal adjourned to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

## **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 dated 4 August 2022.
- 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, including the service of any notices, will be by email.
- 15 On 20 September 2023 the Applicants 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 17 December 2023.
- 16 The Applicants are the registered owners of the property.
- 17 The Applicants require to sell the property.
- 18 The Applicants are in their mid-70s. The first named Applicant suffered a stroke in 2023. The first named Applicant is no longer able to manage the property. The second named Applicant is unable to manage the property in his absence.
- 19 The Applicants have been landlords for 23 years. The Applicants had a portfolio of rental properties. The Applicants have sold all of their other properties following the decline in the first named Applicant's health.
- 20 The Respondent resides in the property with his wife and two children aged 14 and 18.
- 21 The Respondent is actively seeking alternative accommodation in the private sector.
- 22 The Respondent has also consulted the local authority with a view to obtaining rehousing, if he is unable to do so in the private sector.
- 23 The Respondent does not object to the making of an eviction order provided he is given sufficient time to obtain alternative accommodation.

## **Reasons for Decision**

- 24 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be contrary to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. Both parties were in agreement to the granting of an

eviction order in this case with execution of the order suspended for a period of two months.

- 25 The application before the Tribunal were accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon grounds 1 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of sections 54 and 62 of the 2016 Act and therefore that the application could be entertained.
- 26 The Tribunal therefore considered whether ground 1 of Schedule 3 of the 2016 Act had been met. The Tribunal was satisfied that it could make relevant findings in fact based on the application paperwork and the submissions from the parties at the CMD.
- 27 The Tribunal accepted, based on the documents produced by the Applicants and the submissions at the CMD, that the Applicants intended to sell the property within three months of the Respondent having vacated, and were entitled to do so as the registered owners of the property. Mr Meek had confirmed at the CMD that the Respondent did not dispute this.
- 28 The Tribunal therefore considered the reasonableness of making an eviction order, which required the Tribunal to identify those factors relevant to an assessment of reasonableness and determine what weight to give to these.
- 29 The Tribunal took into account the fact that the Applicants were no longer in a position to carry out their duties as landlords, following a decline in Mr Cassidy's health. The Tribunal noted that they had sold off the other properties in their portfolio and that this was the only remaining property to go on the market.
- 30 The Tribunal also had regard to the Respondent's personal circumstances, noting that he resided with his wife and his two children, the latter of whom would likely be at school in the local area. However, whilst the impact of eviction on the Respondent's family was a cause of concern, ultimately the overriding factor in this case was the fact that the Respondent did not object to the making of an eviction order if enforcement was delayed for a period of two months. He had received advice from Mr Meek in putting forward his position to the Tribunal. The Tribunal was also aware that the local authority would have an obligation to provide the Respondent with emergency housing if that became necessary and that the Respondent had already taken steps to ensure that safeguard was in place if required.
- 31 Accordingly, having weighed up those factors that were relevant to the question of reasonableness, the Tribunal concluded that the provisions of ground 1 had been met and it would be reasonable to make an eviction order in the particular circumstances of this case. Furthermore, on the basis that parties were agreed on the matter, the Tribunal determined to suspend execution of the order for a period of two months to provide the Respondent with sufficient time to obtain alternative accommodation.



## **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:**

**Date: 23 December 2024**

**R. O'Hare**