

**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/24/1300

Re: Property at 9 Patna Street, Dalmarnock, Glasgow, G40 3JN (“the Property”)

Parties:

Ms Kathryn Meeke, Rosewood Cottage, Lesmahagow, ML11 0HL (“the Applicant”)

Ms Stacey Rose, 9 Patna Street, Dalmarnock, Glasgow, G40 3JN (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of eviction be granted against the Respondent in favour of the Applicant

Background

1. This is an application for recovery of the Property. The application is dated 18 March 2024. The Applicant is seeking recovery under Ground 1, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that a landlord intends to sell the let property.

Case Management Discussion

2. A case management discussion was held on 29 August 2024 when the Applicant was represented by Mr Casiday, solicitor and the Respondent was represented by Ms Simpson, solicitor.
3. Ms Simpson had submitted written representations immediately prior to the commencement of the case management discussion and Mr Casiday had submitted a written response. Ms Simpson's written representations indicated that she had, that morning, been instructed by the Respondent.
4. Mr Casiday and Ms Simpson indicated that they intended to lead evidence on the merits of the case and it was determined that matters would be continued to an in person hearing on 29 November 2024. Neither party raised any objection to the arrangements for the hearing.
5. Ms Simpson stated that it was her intention to submit an application for legal aid in respect of the Respondent but she assured the tribunal that, if the application were to be refused, Govan Law Centre, her employer, would continue to represent the Respondent at the hearing.
6. Subsequent to the case management discussion, a Direction was made requiring the Applicant to provide written representations which detail her reasons for selling the Property and also information on any alternatives to eviction which she had explored.
7. The Direction required the Respondent to provide written representations which detail her family, social and financial position and provides information on her attempts to find alternative housing.
8. Parties were also required to submit witness lists and documents which were intended to be relied on.

Hearing 29 November 2024

9. A hearing was held on 29 November 2024. The Applicant was present and was represented by Mr Casiday, solicitor. There was no appearance by the Respondent.
10. On 25 November 2024, Ms Simpson, solicitor at Govan Law Centre, emailed the Tribunal administration and intimated that they had withdrawn from acting for the Respondent. As consequence of this, the Respondent was written to by the Tribunal administration and reminded of the arrangements for the hearing.
11. On 28 November 2024, the Tribunal administration received an email from the Respondent which stated that she had received the documentation from the Tribunal and that she did not know that her solicitor had withdrawn from acting for her. It states; *"I wasn't meant to be appearing at court tomorrow as I suffer*

really bad from anxiety and I don't leave my property. My lawyer knew this and medical forms should have been sent over to me. I don't know what is going to happen as I can't get appointment with another lawyer to next week as I need someone to represent me. Can someone please let me know what is going to happen."

12. Later, on 28 November 2024, the Respondent submitted an email to the Tribunal and stated that she would not be able to attend because of severe anxiety and that she was not able to leave her house.
13. The hearing heard that, in response to the emails from the Respondent, the Tribunal administration managed to secure a teleconference line to enable the Respondent to dial into the hearing. The necessary details were emailed to her. The Respondent did not dial in.
14. Mr Casiday said that, in his view, the Tribunal had made reasonable adjustments to enable the Respondent to participate in the hearing. He said that he had contacted Ms Simpson in an attempt to have discussions about the possible agreeing of evidence and he received no response. He said that the Applicant had adhered to the requirement of the Direction whereas the Respondent had not.
15. Mr Casiday submitted that the Hearing should proceed in the hope that the application can be determined. He provided details of the Applicant's financial position with regard to her fixed rate mortgage having come to an end and her lender seeking repayment of the capital sum.
16. Mr Casiday provided some information on the level of rent arrears.

Adjournment

17. The tribunal recognised that the Applicant had submitted the application some eight months previously and that she was entitled to have it determined. The overriding objective of the Tribunal is to deal with proceedings justly. The Respondent has indicated that she wants legal representation and cannot see a solicitor until the following week. In the circumstances, the tribunal considered that it would not be reasonable to proceed to hear evidence from the Applicant and to determine the application.
18. The tribunal accepted that the Respondent appears to have issues in leaving her house and that it is unfortunate that this information was not disclosed to it at the case management discussion. A reasonable adjustment for the Respondent would be for an adjourned hearing to be conducted by teleconference and arrangements were made for an early date for this. The hearing will be held by teleconference on 17 January 2024 at 2 pm.

19. Parties were sent a Note following the Hearing on 29 November 2024. The Note stressed that the Respondent should deal with the Direction which had been issued subsequent to the case management discussion.

Hearing 17 January 2025

20. A Hearing was held by teleconference on 17 January at 2pm.
21. The Applicant was in attendance and was represented by Mr Casiday, solicitor.
22. There was no appearance by the Respondent.

Preliminary Matters

23. It was noted that details of the Hearing were served on the Respondent by sheriff Officer and the tribunal had sight of the certificate of service which confirmed that this was done on 16 December 2024.
24. On 8 January 2025, the Respondent had submitted an email to the Tribunal in the following terms: *"I haven't been able to find myself a legal representative. I've been trying to find someone who can take on the case and had no luck. I can't talk on behalf of myself even with it being on phone I have panic attacks."*
25. Mr Casiday said that the Applicant's position is as it was at the previous hearing. He said that she requires to have vacant possession of the Property so that she can sell it to enable her to repay the secured loan which had been extended beyond its term.
26. Mr Casiday submitted that the hearing should proceed to allow determination of the application. He said that he believed that all reasonable adjustments had been made to allow the Respondent to participate in the proceedings. He said that, if the respondent was too anxious to attend the hearing, she could have submitted written submissions in addition to those submitted by Ms Simpson when she represented her. He said that the Respondent had not complied with the Direction.
27. The tribunal determined that it was appropriate to proceed with the hearing and that the Applicant was entitled to have her application determined. In arriving at its decision, the tribunal had regard to the overriding objective to deal with the proceedings justly. The Respondent could have arranged for someone to appear on her behalf and that person would need not have been a solicitor. The Respondent could have submitted her views on the application and could have responded to the terms of the Direction dated 6 September 2025.

28. Findings in Fact

28.1 The Applicant and the Respondent entered into a private residential tenancy for the Property on 3 February 2022.

28.2 The tenancy commenced on 5 February 2022.

28.3 The rent due under the tenancy was initially £525 and is currently £540.75.

28.4 There are currently rent arrears of £1828.71.

28.5 The Applicant owns the Property and there is a secured loan over the Property which is due to the Bank of Scotland. The term of the loan has expired.

28.6. The Bank of Scotland is seeking repayment of the secured loan.

28.7 The Applicant has a portfolio of 24 rental properties.

28.8 The Applicant served a Notice to Leave on the Respondent on 24 October 2023 requiring her to vacate the Property on 20 January 2024.

28.9 The Applicant has not vacated the Property.

28.10 The Applicant intends to sell the Property to repay the secured loan.

28.11 The Applicant has made enquiry of her letting agent with regard to alternative accommodation being made available for the Respondent.

28.12 The letting agent has been unable to find alternative accommodation for the Respondent.

28.13 The Applicant has no free property within her portfolio to accommodate the Applicant.

28.14 The Respondent is a lone parent aged 36 and resides in the Property with her three children, aged 9, 8 and 7 who all attend a school which is local to the Property.

28.15 One of the Respondent's children is suspected of having autism and is well supported at his school.

28.16 The Respondent suffers from agoraphobia and anxiety if she is required to leave her home.

28.17 The Property is situated close to the homes of the father of the Respondent's children and their grandmother. They each provide support to the Respondent and her children.

28.18 The Respondent is in receipt of benefits and has no capital.

28.19 The Respondent struggles financially and attends a support group and has input from a community psychiatric nurse.

28.20 The Respondent has been unable to find alternative accommodation.

Reasons

The Law

Private Housing (Tenancies) (Scotland) Act 2016

Section 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.

SCHEDULE 3 EVICITION GROUNDS

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,

(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.

29. The tribunal had the following documents:

29.1 Title Sheet for the Property

29.2 Private Residential Tenancy Agreement dated 3 February 2022

29.3 Notice to Leave dated 24 October 2023

29.4 Notice to Glasgow City Council dated 18 March 2023 in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003

29.5 Letter from Keys Estate Agents dated 6 March 2024 with regard to sale of the Property.

29.6 Rent statement to 5 August 2024.

29.7 Letters to the Applicant from the Bank of Scotland dated 25 July and 7 October 2024.

29.8 Email from Infiniti Properties, letting agents to the Applicant's solicitor dated 16 October 2024.

29.9 Written submissions from Ms Simpson, solicitor for the Respondent, dated 29 August 2024.

29.10 Written submissions from Mr Casiday, solicitor for the Applicant, dated 1 November 2024.

30. Ms Meeke explained that she had owned the Property for more than 25 years and that it was subject to a Bank of Scotland mortgage. She said that it was an interest only loan and its term had expired. She said that the lender was looking for repayment of the capital sum. The tribunal was referred to the letters from the Bank of Scotland dated 25 July and 7 October, both 2024, which confirmed this.

31. The letter dated 25 July 2024 stated that the capital sum due was £73924.42 and Ms Meeke said that the value of the Property "at a push" might be in the region of £85000. She said that it would depend on the condition of the Property when vacant possession was achieved and the price achieved might be lower. She said that there is little equity in the property.

32. Ms Meeke said that, if she was unable to repay the loan, the lender would commence repossession proceedings which would involve her in costs and would affect her credit rating.

33. Ms Meeke said that she was unable to re-mortgage the Property because the lending criteria had changed since she had obtained the mortgage more than 25 years previously. She said that it was much more difficult for landlords to get secured loans and that, in general terms, higher deposits are required. She said that the Property is an ex local authority house and that this also presents difficulties with some lenders.
34. Ms Meeke said that she had asked her letting agent if the Respondent could be accommodated in another property which it manages. She said that the fact that the Respondent has rent arrears means that this was not possible because she would not pass the required tenancy credit check.
35. Ms Meeke said that she has a portfolio of 24 properties and that there is none which would suit the Respondent and that, in any event, they are all occupied.
36. Mr Casiday referred the tribunal to an email to him from Ms Anne McPartlin of Infiniti Properties, the letting agent of the Applicant. The email stated that there is no suitable property in the Applicant's portfolio which would suit the Respondent and that Infiniti Properties would not be *"willing to offer alternative accommodation to Ms Rose."*
37. Ms Meeke said that there is a person willing to buy the Property but that he requires the Property to be free of any tenancy. She said that, if that person does not purchase the Property, it is her intention to put in the open market. The tribunal was referred to the letter from Key Estate Agents confirming their acceptance of an instruction to sell the Property and that they anticipate the value of the Property to be in the region of £80000 subject to home report findings.
38. Ms Meeke said that the current level of rent arrears is £1828.71. She confirmed that the Respondent does not pay the shortfall between the level of rent and what is paid direct by housing benefit.

Submissions

39. Mr Casiday referred to his written submissions where he stated that the Applicant requires to repay the Bank of Scotland loan and that the best option for her to achieve this is the sale of the Property.
40. Mr Casiday said that the Respondent had not addressed the Direction and provided the information requested by it. He said that the Respondent could have provided information in written form even if she was unable to participate orally in the Tribunal proceedings.

41. Mr Casiday said that it would be reasonable for the order to be granted. This would allow the Applicant to deal with the Bank of Scotland loan by selling the Property.

Discussion

42. The tribunal considered that it had to adopt a two stage approach to the determination. It had to decide if the Applicant had provided sufficient evidence that the requirements of Ground 1, Part 1 of Schedule 3 of the Act had been met. It then had to determine if it was reasonable to grant the order of eviction.
43. The Applicant was a credible and reliable witness. The tribunal accepted that she intends to sell the Property if she recovers possession. There are clear reasons why she would want to do so and the correspondence from the Bank of Scotland was compelling. The tribunal accepted that the secured loan requires to be paid and accepted the evidence of the Applicant that re-financing of the loan was not possible.
44. The Applicant's evidence was that a person is interested in purchasing the Property and that, if he did not, it is her intention to put it on the open market. The letter from the estate agents was supportive of her evidence in this regard.
45. The Applicant's position was that it would be reasonable for the order to be granted for the reasons outlined in her evidence both written and oral.
46. The Respondent had not meaningfully engaged with the Tribunal process. Helpfully, the Respondent's solicitor had submitted an email dated 29 August which contained representations. This was prior to the solicitor intimating that she no longer acted for the Respondent.
47. The email from Ms Simpson contained useful information on the Respondent's personal and social circumstances. Although the tribunal was not able to test the information, which it would have been able to do had the Respondent attended the hearing, it was content to accept this information particularly as it was not challenged by Mr Casiday.
48. The email states that the Respondent is 36 years old and is a single parent with three children aged 9, 8 and 7. The children attend a school local to the Property and the family live near the children's father and grandfather who provide support to the Respondent and her children. The representations state that one child has a suspected diagnosis of autism and is well supported at his school.
49. The representations state that the Respondent has health issues and suffers from agoraphobia and anxiety if she requires to leave her house. The Respondent attends a support group for a particular issue and has input from a community psychiatric nurse.

50. Ms Simpson states that the Respondent has been unable to obtain alternative accommodation because of the high market rent of properties and the shortage of social housing.

Determination

51. The tribunal had no difficulty in finding that the Applicant intends to sell the Property.

52. In considering reasonableness, the tribunal identified that the facts relevant to the issue before it are the financial position of the Applicant, specifically the need for repayment of the secured loan, the rent arrears, and the personal and social circumstances of the Respondent.

53. There are rent arrears of almost £2000. The Applicant is not seeking an order of eviction on the basis of the arrears but their existence does provide difficulties for the parties. The Applicant is not being paid what she is contractually due and the Respondent will have difficulty in securing a private tenancy because of her record of non- payment.

54. The tribunal was satisfied that it was reasonable for the Applicant to seek to recover possession of the Property to enable it to be sold and the secured loan repaid. In coming to that view, the tribunal had regard to the circumstances of the Respondent. She has health issues, a child with a suspected health issue and 3 children who attend a school local to the Property. Notwithstanding that, the tribunal, in weighing the position of each party, considered that it was appropriate for it to exercise its discretion in favour of the Applicant.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
17 January 2025**

