



**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/24/1015**

**Re: Property at 32 Castle Court, Kirkintilloch, G66 1LL ("the Property")**

**Parties:**

**Mr William McAdam, 13 Smithyends, Cumbernauld, G67 2SJ and Ms Yvonne McAdam, 16 Yetts Crescent, Kirkintilloch, G66 3RN ("the Applicants")**

**Mr Jordan Kingston, 32 Castle Court, Kirkintilloch, G66 1LL ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

At the Case Management Discussion ("CMD"), which took place by telephone conference on 14 January 2025, the Applicants were not present but were represented by Ms Maria McNulty of R&G Estate Agents. The Respondent was also present and was represented by Mr Raymond Heath of East Dunbartonshire CAB.

Prior to the CMD the Tribunal received from the Applicants' representative an email dated 24 December 2024 with attachments.

The Tribunal also received from the Respondent's representative emails dated 5 and 12 December 2024 with attachments.

The CMD is in respect of this matter and the related application bearing reference FTS.HPC.CV.24.1016.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

**Background**

The Tribunal noted the following background:-

- i. The Applicants are the heritable proprietors of the Property.
- ii. The Applicants are estranged and have reached agreement on the settlement of their joint affairs which includes title to the Property being transferred to the

- Second Applicant alone in exchange for payment by the Second Applicant to the First Applicant of a capital sum.
- iii. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 23 February 2022.
  - iv. On 18 October 2023, the Applicants served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 13 January 2024 on the basis that the Applicants intend to sell the Property.
  - v. The Applicants have served on East Dunbartonshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **The CMD**

At the CMD Ms McNulty made the following representations:-

- i. Firstly, the Tribunal observed that the application runs in the name of Ms Yvonne McAdam alone and drew attention to the terms of the letter of authority from Mr William McAdam dated 20 June 2024 which authorises that the action be raised in their joint names before Tribunal relative to the Property. Ms McNulty stated that as at the CMD title to the Property remains in the joint names of Ms and Mr McAdam. In order to settle the divorce between the Ms and Mr McAdam the Property requires to be sold in order that a capital sum agreed to be payable by Ms McAdam to Mr McAdam can be paid. Mr McAdam is aware of the proceedings and wants the funds that are agreed to be due to him. The application was raised by Ms McAdam personally. Given the terms of the mandate Ms McNulty invited the Tribunal to allow the application to be amended into the joint names of Ms and Mr McAdam.
- ii. In anticipation of the intended sale the Property has been appraised and a valuation has been obtained from surveyors. Ms McNulty has clients who may be interested in purchasing the Property with vacant possession but the home report will not be instructed until vacant possession is secured and internal decoration undertaken.
- iii. The current rent arrears balance as at the CMD is £8,904.55 with the most recent payments having been made on 2 January 2025 in the sums of £650 by way of the ongoing monthly rent and £150 by way of a contribution towards the arrears.
- iv. It was not initially the intention of Ms McAdam to sell the Property. However she only has the funds to settle the agreed capital sum due to Mr McAdam if the Property is sold. All of this is causing her emotional strain and she needs to move on. She has been to the Doctor with high blood pressure due to the protracted nature of this process and the uncertainty associated with.
- v. Previously an application was made for the Universal Credit being received by the Respondent to be paid directly towards the rent. This happened briefly then the Respondent cancelled his Universal Credit. He continues in occupation of the Property. This situation cannot continue.
- vi. There is a mortgage over the Property.
- vii. There is a mortgage over Ms McAdam's own home at 16 Yetts Crescent, Kirkintilloch.
- viii. The Property is not being looked after. Dogs are present without permission. This has caused the Property to be unclean with a bad smell which will incur costs to put right.
- ix. The Respondent has made various promises of payment relative to the arrears, for example, that the sums would be settled from an inheritance expected from Germany, and he also previously stated that he had secured another property. Nothing has come to fruition.

- x. The Respondent also mentioned the Church being involved.

At the CMD Mr Heath and the Respondent made the following representations: –

- i. The paperwork submitted by the Applicant is in order.
- ii. The Respondent's personal statement lodged by email on 12 December 2024 outlines his financial struggles and poor mental health.
- iii. He is working with Christians Against Poverty and has a debt arrangement scheme being managed by them. The payments made on 2 January 2025 were in respect of the December rent/arrears contribution.
- iv. The debt is not in dispute. The Respondent accepts responsibility for the debt.
- v. He does, however, dispute some of the personal comments made in the Applicant's representative's email of 24 December 2025.
- vi. The Respondent is working full-time as an HGV mechanic with Scania. He has held this employment since 1 June 2024 and receives net earnings of £1500 per month.
- vii. He has other debts.
- viii. His partner is not working and is in receipt of Adult Disability Payments at £514.60 per month.
- ix. The Respondent and his partner have no dependents.
- x. The Respondent understands why the Applicants require to sell the Property.
- xi. The Respondent has a housing application with the Common Housing Register and also with the local authority.
- xii. He has also applied for housing association accommodation.
- xiii. He will be left in a very vulnerable position should he lose occupation of the Property. He would like to try to sustain the tenancy.
- xiv. Securing another tenancy will be difficult with the arrears of rent and the cost of private rented accommodation increased.
- xv. In response to a question from the Tribunal as to why the Respondent had not paid any rent between 1 June 2024 when he started employment and November 2024 when a months rent was paid together with a contribution towards the arrears, the Respondent stated that he had been advised not to pay one creditor to the prejudice of others. The Debt Management Scheme would deal with payment of creditors once the Respondent had been set up on the system.
- xvi. The local authority will not accept a homeless application until an eviction order is granted.
- xvii. Mr Heath has advised the Respondent that there is a strong possibility that an eviction order would be granted at the CMD. Any delay in the enforcement of such an order would allow contact with the homeless team.
- xviii. The cost of temporary accommodation can, however, be prohibitive.
- xix. The Respondent stated that he had hoped to receive a small amount of money from a family member that had passed away but that inheritance had not been received. There had been a massive rift within the Respondent's family and he was not willing to pursue payment.
- xx. With regard to alternative accommodation, at one stage he and his partner were to be moving in with friends who were purchasing a property and would have a spare room. The purchase fell through.
- xxi. With regard to the presence of dogs, the Respondent stated that the previous landlord had given permission and the letting agent had visited and was also content with the presence of the dogs.

The Tribunal adjourned to consider the parties' written and oral representations.

## **Findings in Fact**

- i. The Applicants are the heritable proprietors of the Property.
- ii. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 23 February 2022.
- iii. On 18 October 2023, the Applicants served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 13 January 2024 on the basis that the Applicants intend to sell the Property.
- iv. The Applicants are estranged and have reached agreement on the settlement of their joint affairs which includes a payment by the Second Applicant to the First Applicant of a capital sum.
- v. In order to settle their divorce the Property requires to be sold in order that an agreed capital sum can be paid by Ms McAdam to Mr McAdam.
- vi. In anticipation of the intended sale the Property has been appraised and a valuation of the Property has been obtained from surveyors.
- vii. The market appraisal and fee quotation of R&G Estate Agents Limited dated 8 April 2024 is sufficient evidence of the Applicants' intention to sell the Property
- viii. The current rent arrears balance as at the CMD is £8,904.55.
- ix. There is a mortgage over the Property.
- x. There is a mortgage over Ms McAdam's own home at 16 Yetts Crescent, Kirkintilloch.
- xi. The Respondent and his partner have suffered poor mental health in recent times.
- xii. The Respondent has dogs at the Property.
- xiii. The Respondent has other debts in addition to the rent arrears. He is working with Christians Against Poverty and has a debt arrangement scheme being managed by them.
- xiv. The Respondent made payments of £650 and £150 on each of 28 November 2024 and 2 January 2025.
- xv. The Respondent is working full-time as an HGV mechanic with Scania. He has held this employment since 1 June 2024 and receives net earnings of £1500 per month.
- xvi. His partner is not working and is in receipt of Adult Disability Payments at £514.60 per month.
- xvii. The Respondent and his partner have no dependents.
- xviii. The Respondent has submitted housing applications to the Common Housing Register, to the local authority and to housing associations.
- xix. Securing another tenancy will be difficult with the arrears of rent accrued relative to the property and the accommodation of dogs being required.
- xx. The local authority will not accept a homeless application until an eviction order is granted.
- xxi. The Applicants have served on East Dunbartonshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

## **Reasons for Decision**

Firstly, the Tribunal allowed the application to be amended to run in the names of both Ms Yvonne McAdam and her estranged husband, Mr William McAdam. This accords with the letter of authorisation Mr McAdam provided relative to these proceedings. As at the CMD title to the Property remained in their joint names. There is no prejudice to the Respondent in the amendment being allowed and no opposition was offered.

Secondly, the application proceeds upon Ground 1 of Schedule 3 of the 2016 Act.

Ground 1 states:-

- "(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 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."*

The Applicants are entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietors thereof.

Sub-paragraph 2(b) requires that the Applicants intend to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicants rely upon a market appraisal and fee quotation of R&G Estate Agents Limited dated 8 April 2024 relative to the sale of the Property. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c).

There were no substantive disputed facts between the parties.

The Applicants seek an eviction order. The Respondent did not ask the Tribunal to fix an evidential hearing. The Respondent did not suggest that it was not reasonable to issue an eviction order, simply that he would be in a vulnerable position if he lost his tenancy of the Property. Indeed Mr Heath confirmed having advised the Respondent that there was a strong possibility that an eviction order would be granted at the CMD.

The Tribunal carefully weighed and balanced all the relevant facts found by it which bear on reasonableness.

The Tribunal is satisfied that the Applicants intend to sell the Property as soon as vacant possession is recovered. The Tribunal is satisfied that the Applicants intend to sell the Property to release funds to enable Ms Yvonne McAdam to pay to Mr William McAdam an agreed capital amount by way of a divorce settlement. Vouching had been produced relative thereto. Ms McAdam is otherwise unable to raise those funds and the Respondent's accumulation of significant rent arrears will have inevitably hampered the Applicants' financial positions.

The Tribunal noted the apparent health conditions of the Respondent and those of his partner, which were not vouched. The Tribunal also acknowledged the steps the Respondent has already taken to find somewhere else to live. It goes without saying that the significant rent arrears that have accrued and the dogs that the Respondent keeps will make his search more difficult.

The Applicants' reasons for intending to sell the Property are subjectively reasonable and their legal right to dispose of the Property for that purpose must, in this instance, take precedence over the Respondents' preference to remain in occupation. The Respondent's circumstances – the accrual of significant rent arrears and keeping dogs - are such that finding alternative accommodation may be difficult. These issues do not assist the Respondent's position in these proceedings.

On that basis the Tribunal concludes that it is reasonable to grant an eviction order.

Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure alternative accommodation. Accordingly, the Tribunal determined that the order cannot be enforced until after 15 March 2025.

#### **Determination**

The Tribunal -

- i. Allowed the application to be amended to run in the names of Ms Yvonne McAdam and her estranged husband, Mr William McAdam; and thereafter
- ii. Determined that an eviction order should be granted against the Respondent in favour of the Applicant suspended to 12 noon on 15 March 2025.

#### **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.**

# G.Buchanan

**Legal Member/Chair**

**15 January 2025  
Date**