



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/2472**

**Re: Property at 2/3 38 John Neilson Avenue, Paisley, PA1 2SR (“the Property”)**

**Parties:**

**Ms Lynsey O'Neill, Flat 3/2, 25 Rosebery Terrace, Glasgow, G5 0AX (“the Applicant”)**

**Ms Morna Anne Brown, Mr James Angus Graham, 2/3 38 John Neilson Avenue, Paisley, PA1 2SR (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondents. The Tribunal delayed execution of the order until 12 May 2025.**

**Background**

1. An application was received from the Applicant's representative on 30 May 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules') seeking recovery of the property under Ground 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act. The application form named only the first Respondent, Ms Morna Anne Brown.
2. Attached to the application form in respect of the application were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 7 April 2023.

- (ii) Copy rent statement showing arrears of rent due by the Respondents to be £2480 as at 30 May 2024.
  - (iii) Email confirmation that a notice under section 11 of the Homelessness etc. (Scotland) Act 2003 had been received by Renfrewshire Council on 30 May 2024.
- 3. Further information was requested from the Applicant by the tribunal administration on 19 June 2024. In response to this, further information was submitted by the Applicant's representative on 20, 21 and 28 June 2024 on behalf of the Applicant. This included confirmation that the application should include both Respondents as joint tenant. It also included the following:
  - (i) Copy notice to leave addressed to both Respondents dated 12 March 2024 citing ground 1, and stating the date before which proceedings could not be raised to be 8 June 2024.
  - (ii) Copy email from Cochran Dickie Estate Agents dated 27 June 2024 confirming that the Applicant had instructed them to market the property on her behalf.
- 4. Following a further request for information from the tribunal administration, the Applicant's representative also submitted on 18 July 2024:
  - (i) a copy of the notice under section 11 of the Homelessness etc. (Scotland) Act 2003 sent to Renfrewshire Council.
  - (ii) proof of sending of the notice to leave by email to both Respondents dated 12 March 2024.
- 5. The application was accepted on 14 August 2024.
- 6. Notice of the case management discussion (CMD) scheduled for 11 February 2025, together with the application papers and guidance notes, was served on the first Respondent by sheriff officer on behalf of the tribunal on 20 December 2024 and on the second Respondent on 8 January 2025. The Respondents were invited to submit written representations by 9 January 2025.
- 7. A further email was submitted by the Applicant's representative on behalf of the Applicant on 7 February 2025.
- 8. An email was received from the first Respondent at 4.15pm on 10 February 2025, the day before the CMD, notifying the Tribunal that neither Respondent would be able to attend the CMD. This was not seen by the Tribunal until the following morning, immediately before the CMD. No written representations were otherwise received from the Respondents prior to the CMD.

## **The case management discussion**

9. A CMD was held in person at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on 11 February 2025. Ms Nicola Gill and Ms Amanda Rodden of Belvoir Lettings were present and represented the Applicant. Neither Respondent was present or represented.
10. The Tribunal noted that in her email of 10 February 2025, the first Respondent had explained that neither she nor the second Respondent would be able to attend the CMD. She explained that she had been experiencing various health issues in recent months and that the second Respondent was working full time and had caring responsibilities. She said that she had been staying with family due to her health issues and had only become aware of the tribunal proceedings the previous week.
11. The first Respondent went on to say that she had had an accident on Monday 3 February and had been in hospital until Wednesday 5 February. She said that her symptoms had since worsened and she had been advised by her GP to go back to hospital on the evening of 10 February. She provided medical evidence to support her submissions. She also suggested in her email that the second Respondent was also experiencing some health issues.
12. The Tribunal considered whether to proceed with the case management discussion in the circumstances. It noted that the first Respondent did not request a postponement in her email of 10 February, and appeared only to be offering an explanation for the Respondents' absence at the CMD. Neither had there been any written representations from the Respondents to indicate that they were opposed to the application.
13. The Tribunal asked the Applicant's representatives for their views on the matter. They indicated that they had been aware of the first Respondent's health issues, and had also become aware of her accident on 4 February 2025. Miss Gill said that she had spoken to the second Respondent on 3 February and he had said that he did not plan to attend the CMD. The email from the Applicant's representative of 7 February 2025, which included a statement from the Applicant, had been submitted as a consequence of this.
14. Miss Gill said that it was her understanding from speaking to the Respondents that they did not wish to oppose the application. She also said that there had been long periods where the Respondents had not communicated with them and that they had previously cancelled planned inspections and calls.
15. While the Tribunal was sympathetic to the Applicant's various health issues, it was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD to both Respondents had been duly complied with. The Tribunal considered at some

length whether to proceed with the CMD in the circumstances. It noted that the Respondents, having been invited to submit written representations, had not indicated any opposition to the application. Bearing in mind the overriding objective, in particular avoiding delay, so long as compatible with the proper consideration of the issues, the Tribunal decided to proceed with the CMD in the absence of the Respondents.

### **The Applicant's submissions**

16. Miss Gill asked the tribunal to grant an eviction order under ground 1. She confirmed that it was the Applicant's intention to sell the property as soon as it was vacant. It was still her intention to put the property on the market via Cochran Dickie Estate Agents as soon as possible,
17. The matter had been ongoing for some time and the Applicant's personal circumstances had changed since the application was made. The Applicant had sent a notice to leave to the Respondents 11 months previously, with the intention of selling the property, to allow her to buy a larger property with her partner. She was now expecting a baby and was due to give birth in June 2025. Her mental health had suffered and she had been experiencing stress due to the ongoing issues with the property. She was currently living with her partner and they needed to move into a larger property suitable for their family. They were unable to do so, however, until she was able to sell the property. Miss Gill believed that this was the only property which the Applicant owned, which she had previously lived in as her own home.
18. The Respondents were still in substantial rent arrears. They had entered into a payment plan some months ago and had been paying down the arrears, but still owed £3335 to the Applicant. The Applicant's representatives produced an up to date rent statement during the CMD which confirmed this.
19. Miss Gill said that Belvoir had not been approached for a reference by any local housing associations and she was not aware that the Respondents had been in contact with the local authority regarding being re-housed. She believed that they were aware, however, that they were not required to leave the property until an eviction order was granted. She did not believe that they wished to oppose the application, but thought that they may find it difficult to find another property because they were in rent arrears.
20. Miss Gill confirmed that no-one else aside from the Respondents was living in the property. She confirmed that the second Respondent works full time, and that the first Respondent is not currently employed. The Applicant was aware of the Respondents' ongoing health issues and had tried to resolve matters with them, but she now required to get her property back given the length of time the matter had been ongoing, and her changed circumstances.

## Findings in fact

21. The tribunal made the following findings in fact:

- The Applicant owns the property.
- The Applicant is the registered landlord for the property
- There is a private residential tenancy in place between the parties, which commenced on 7 April 2023.
- The Notice to Leave was validly served on the Respondents by email on behalf of the Applicant on 12 March 2024.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondents ceasing to occupy it.
- The rent due under the tenancy is £695 per month due in advance on the 7<sup>th</sup> of each month.
- The Respondents have paid £1000 per month since November 2024 towards the rent and arrears.
- As at 11 February 2025, the Respondents are in arrears of rent totalling £3335.

## Reasons for decision

22. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

23. The Tribunal firstly considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 1 states:

### ***Landlord intends to sell***

*1(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.*

24. The Tribunal determined that, as the owner of the property, the Applicant was entitled to sell it. Having had regard to the oral evidence submitted on behalf of the Applicant, and the letter from Cochran Dickie Estate Agents dated 28 June 2024, the tribunal also found that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it.
25. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
26. The Tribunal found that there was a difficult balance to be struck given the circumstances of all parties involved. It noted that the Appellant wished to sell the property as soon as possible, to allow her and her partner to buy a larger property for themselves and their forthcoming baby. It noted that the current situation was causing her stress and that it had now been almost a year since the Notice to Leave was sent. The Tribunal also noted from the land certificate for the property that there was an outstanding mortgage over the property. The Respondents had accrued significant rent arrears and did not appear to be looking for another property, which were adding to the Applicant's stress. The Applicant had clearly tried to resolve matters with the Respondents regarding the arrears.
27. The Tribunal also considered account what was known about the Respondents' circumstances, aside from the rent arrears. It noted that both Respondents had ongoing health issues and that the second Respondent also appears to have caring responsibilities. The first Respondent appeared to be unemployed at present. She had produced evidence from her doctor that she was currently unfit from work, and had been since early December 2024. The Respondents had, however, stopped paying rent after receiving the Notice to Leave in March 2024. They had not paid any rent between April and September 2024, which pre-dated the first Respondent's current unfitness for work.
28. The Respondents had, however, been gradually repaying the arrears in recent months, having agreed to pay £1000 per month (£695 rent plus £305 towards the arrears). It would take some time to repay the outstanding arrears at that rate, however. It appeared that the Respondents may be struggling to afford their current rent given their present circumstances.

29. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the significant rent arrears owed by the Respondents, and to the impact which this has had on the applicant, as well as to the Applicant's changed personal circumstances and her desire to move on with her life.
30. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.
31. Before deciding to grant the order, the Tribunal sought the views of the Applicant's representatives on the possibility of delaying execution of the eviction order beyond the standard 30 day period, in terms of rule 16A of the 2017 rules, to give the Respondents more time to find a new property and to address their rent arrears.
32. The Applicant's representatives said that the Applicant would be willing to agree an extension to the execution of the eviction order.
33. The Tribunal therefore decided to delay execution of the order until 12 May 2025, to give the Respondents further time to find somewhere else to live, and to address the outstanding arrears. It noted that they would now be in a position to approach the local authority regarding possible re-housing.

## **Decision**

The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the property. The Tribunal delayed execution of the order until 12 May 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.**

**Sarah O'Neill**

**11 February 2025**

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**Legal Member/Chair**

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**Date**