



**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/24/2258**

**Re: Property at 31 Linkwood Road, Airdrie, ML6 6GP (“the Property”)**

**Parties:**

**S & N Singh, 3 Roseburn Place, Coatbridge, ML5 1EN (“the Applicant”)**

**Ms Judith Rae, 31 Linkwood Road, Airdrie, ML6 6GP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution of the order suspended for a period of six weeks.

**Background**

- 1** The Applicant applied for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 1 of schedule 3 of the 2016 Act, stating that the Applicant intended on selling the property.
- 2** By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion (“CMD”) was scheduled to take place by teleconference on 18 February 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 8 January 2025.
- 3** A Direction was issued to the Applicant requiring them to provide further evidence to support the ground for possession in advance of the CMD. Both

parties were invited to make written representations. No representations were received from either party in advance of the CMD.

## **The CMD**

- 4** The CMD took place on 18 February 2025 by teleconference. Ms Vicki McGuire of Jewel Homes represented the Applicant. The Respondent also joined the call.
- 5** The Tribunal had the following documents before it:-
  - (i) Form E application form dated 16 May 2024;
  - (ii) Title sheet LAN203351;
  - (iii) Written mandate authorising Ms McGuire of Jewel Homes to represent the Applicant;
  - (iv) Private residential tenancy agreement between the parties dated 29 September 2023;
  - (v) Section 11 notice to North Lanarkshire Council together with proof of delivery by email;
  - (vi) Notice to leave dated 3 November 2023 together with proof of delivery by email to the Respondent; and
  - (vii) Email from the Applicant to Jewel Homes regarding the sale of the property.
- 6** The Tribunal explained the purpose of the CMD and the legal test under ground 1 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from the parties. For the avoidance of doubt the following is a summary of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7** As a preliminary matter Ms McGuire confirmed that no further evidence had been submitted in response to the Direction. She referred to the email from the Applicant to the estate agency arm of Jewel Homes instructing the sale of the property once vacant. This was the only evidence she had been provided with.
- 8** Ms McGuire advised that she had worked with the Applicant for a number of years. The Applicant wished to leave the rental market and was in the process of doing so, having reduced their portfolio from 20 to 14. The Applicant had considered selling the property at Linkwood Road to another landlord. They had however been advised by an estate agent that this was unrealistic due to its size and value. The property was a four bedroom townhouse which was not a typical private let for the area. Ms McGuire had been in touch with the Respondent and understood that she was seeking rehousing with the local authority. Ms McGuire confirmed that the Respondent had signed a new tenancy agreement in October 2023, however she had occupied the property prior to that. The Applicant had been unable to locate her previous tenancy agreement.

- 9 The Respondent confirmed that she had resided in the property since November 2010. The Applicant had notified her of their intention to sell the property in August 2023. The Applicant's letting agent had explained the process that would be followed. The Respondent had contacted the local authority and had made an application for housing. She could not afford another private let in the area. The local authority had advised her that they would not be able to help until an eviction order was in place. The Respondent confirmed that she resided in the property with her five children, aged 11, 13, 14, 17 and 20. The type of property her family required was not readily available. There was the possibility that the local authority would put her into temporary accommodation until a suitable property was found. The Respondent confirmed that she was not opposing the eviction order.

## **Relevant Legislation**

- 10 The Tribunal considered the following provisions of the 2016 Act:-

### ***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**

- 11 The Respondent has occupied the property since November 2010.
- 12 The Applicant and Respondent signed a tenancy agreement for the property, which commenced on 2 October 2023.
- 13 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 3 November 2023 the Applicant sent a notice to leave to the Respondent by email.
- 15 The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 16 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 29 January 2024.
- 17 The Applicant is the registered owner of the property.
- 18 The Applicant intends to market the property for sale within three months of the Respondent vacating.
- 19 The Applicant requires to sell the property in order to remove themselves from the rental sector. Due to the size and value of the property, it is unlikely to be attractive to new landlords and will require to be sold on the open market.
- 20 The Applicant is in the process of disposing of their 20 rental properties. The Applicant has to date reduced their portfolio from 20 to 14 properties.
- 21 The Respondent resides in the property with her five children aged 11, 13, 14, 17 and 20.
- 22 The Respondent cannot afford a private let in the area.
- 23 The Respondent has applied for housing with the local authority. The local authority has advised the Respondent that they cannot offer her assistance until an eviction order is granted by the Tribunal.
- 24 The Respondent does not oppose the granting of an eviction order. The Respondent wishes to secure suitable alternative accommodation with the local authority.

## **Reasons for Decision**

- 25 The Tribunal took into account the application paperwork and the submissions at the CMD. The Tribunal was satisfied that it could reach a decision on the

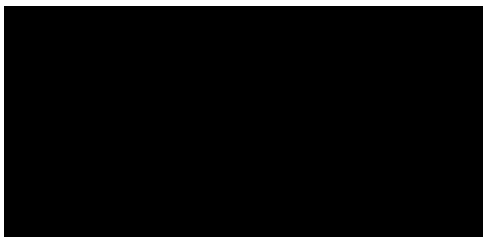
application without a hearing under Rule 18 of the Rules, and make relevant findings in fact based on the information provided by the Applicant and the Respondent.

- 26** Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 1 had been met in this case.
- 27** The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet LAN203351. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondent having vacated. Whilst the Applicant had failed to provide further documentary evidence in response to the Tribunal's Direction, Ms McGuire had made full submissions at the CMD, supported by the email from the Applicant to the estate agency arm of Jewel Homes instructing the sale. The Tribunal found the Applicant's reasons for selling the property as outlined by Ms McGuire to be credible and therefore accepted that their intention was genuine in this case.
- 28** The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 29** The Tribunal gave significant weight to the Applicants' property rights, which entitled them to dispose of the property. The Tribunal noted that they were in the process of selling off their property portfolio in order to leave the rental market entirely. The Tribunal accepted that the only option for this property was a sale on the open market, based on its size and value, which rendered it unattractive to new landlords.
- 30** The Tribunal carefully considered the Respondent's circumstances. The Tribunal noted that she was a single mother who resided in the property with five dependents. Whilst the Tribunal had some concern about the risk to the Respondent and her family were an eviction order to be granted, ultimately the Tribunal gave greater weight to the fact that the Respondent did not object to the application. She had applied to the local authority for housing. She wished to obtain a council property, and based on the advice the local authority had given her it appeared that the granting of the eviction order would assist her in this regard.
- 31** The Tribunal therefore concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met. However in order to give the local authority additional time to source a suitable property for the Respondent and her family the Tribunal determined to suspend execution of the order for a period of six weeks.

**32** The decision of the Tribunal was unanimous.

### **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.**



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**Legal Member/Chair**

**18 February 2025**

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**Date**