



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/1906**

**Re: Property at 9 Edmonston Drive, Dalkeith, EH22 1QQ (“the Property”)**

**Parties:**

**Mr George Wilson, Mrs Catherine Wilson, 8 Birch Avenue, Springwood Village, Kelso, TD5 8LR (“the Applicant”)**

**Mr Raymond Pettigrew, 9 Edmonston Drive, Dalkeith, EH22 1QQ (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision - In absence of the Respondent**

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

**Background**

- 1.** The Applicant seeks an eviction order in terms of Section 51 and Ground 1 of schedule 3 of the 2016 Act. A section 11 notice, tenancy agreement, Notice to leave, rent statement and property schedule were submitted with the application.
- 2.** A copy of the application was served on the Respondent, and the parties were notified that a CMD would take place by telephone conference call on 18 October 2024. The Applicant was represented by Ms Burnett. The Respondent did not attend or lodge submissions.
- 3.** At the CMD the Tribunal advised parties that they were not satisfied that the Applicant’s representative was able to provide sufficient information in relation to the reasonableness of granting the order. The CMD was continued and a

direction issued to the Applicants. In response to the direction, the Applicant lodged a submission and documents. These included an email from the Applicants to explain why they intended to sell the property, estimates from contractors for the refurbishment of their current home and some information about the Applicants' and Respondent's personal circumstances.

4. The parties were notified that a further CMD would take place on 6 March 2025 at 10am. The Applicant was represented by Ms Burnett, Ms Cant and Mr Dickson. The Respondent did not participate and was not represented.

### **Summary of Discussion**

5. The Tribunal noted that the further submissions have provided additional information. They appear to establish that the Applicants require to sell the property to release funds. The funds will be used to repay the mortgage on the property and carry out refurbishment work to their current accommodation. They have chosen to sell this property rather than their other rental because of the mortgage. The other is mortgage free. The submissions also establish that the Applicants have health issues and are not in position to carry out the required remedial work to their current home without the sale proceeds from the property. They tried to sell the property on the open market and to the Local Authority with the Respondent still in occupation but were unsuccessful.
6. The Tribunal was advised that the Respondent resides at the property with his daughter and grandson. His rent is up to date and is covered by benefits. Ms Burnet said that the Respondent was not willing to provide them with any further information, but it is understood that he has applied to the Local Authority and is on a waiting list. The Respondent recently contacted the Applicants and indicated that he was not sure whether to attend the CMD. He told them that he has no issue with their decision to sell the property but currently has nowhere to go. In response to questions from the Tribunal Ms Burnett said that their records appear to indicate that the daughter is 15 and the grandson 4 years of age. No other information is available.

### **Findings in Fact**

7. The Applicants are the owners and landlords of the property.
8. The Respondent is the tenant of the property.
9. The Applicant wishes to sell the property to pay off the mortgage and fund essential refurbishment work to their current home. The Applicants do not have the resources to do this without selling the property.
10. The Applicants have attempted to sell the property with the tenant still in occupation but have been unsuccessful.

11. The Applicants served a Notice to leave on the Respondent on 5 December 2023.
12. The Respondent resides at the property with his 15 year old daughter and 4 year old grandson.
13. The Respondent has made an application for housing to the Local Authority.

### **Reasons for Decision**

14. The application was submitted with a Notice to Leave dated 5 December 2023. together with a copy of an email to the Respondent which establishes that the Notice was sent to him on the same date. The Notice states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property.
15. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
16. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
17. Ground 1 of schedule 3 (as amended) 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."
18. From the documents submitted and the information provided at the CMDs, the Tribunal is satisfied that the Applicants intend to sell the property and that ground 1 is established.
19. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The Applicants require to raise funds to carry out refurbishment work to their current home.
  - (b) The Respondent did not contact the Tribunal or indicate that the application is opposed. He did not attend either CMD.

- (c) The Applicants tried to sell the property with the Respondent in occupation but were unsuccessful.
- (d) The Applicants have another rental property, but this is not subject to a mortgage and the Applicants have therefore chosen to sell the property occupied by the Respondent. They have had to remortgage, and their mortgage payments have increased.
20. The Tribunal also notes that there are children resident at the property although no information other than their ages is available. Based on information provided to the Applicants, the Respondent has applied to the Local Authority but currently does not have alternative accommodation arranged. However, he has not opposed the application, and the Applicants have established that they require to sell the property. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the order.
21. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 1 has been established. For the reasons outlined, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

## **Decision**

22. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

Josephine Bonnar

**Legal Member:**

**7 March 2025**