



**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/24/2595**

**Re: Property at 53 Viewpark Road, Motherwell, ML1 3HA (“the Property”)**

**Parties:**

**Joanne Kane, Druim Ard, Balemore, Bayhead, Isle of North Uist, HS6 5EB (“the Applicant”)**

**Lynette Farren, 53 Viewpark Road, Motherwell, ML1 3HA (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 9 November 2021.
2. The application was dated 4 June 2024 and lodged with the Tribunal on 5 June 2024.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 22 February 2024 and said to be served upon the Respondent by recorded delivery (as permitted by the Tenancy Agreement). Evidence of it being posted on 23 February 2024, and of it being signed for on 24 February 2024, were lodged with the application. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the

landlord intends to sell". In regard to Ground 1, the body of the notice referred to an accompanying email showing an instruction to "TM Residential Ltd" to sell the Property. The Notice to Leave intimated that an application to the Tribunal would not be made before 26 May 2024.

4. It was unclear if the said email from TM Residential Ltd which accompanied the Notice to Leave was lodged with the application, but the application papers contained:
  - a. An email exchange between the Applicant and TM Residential Ltd of 30 January to 21 February 2024 which included references to Applicant's intention to sell; and
  - b. An agreement on marketing the Property with "Homelink" dated 28 June 2024.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon North Lanarkshire Council on 3 June 2024 was included in the application papers.
6. The day prior to the case management discussion ("CMD"), the Respondent's representative provided brief submissions indicating that the Respondent did not seek to oppose eviction but sought a suspension, to allow her to move to a new property in an organised fashion. Details of physical and mental health conditions were provided to support the motion that a suspension would be required to accommodate the Respondent's voluntary removal.

## **The Hearing**

7. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 4 March 2025 at 10:00. We were addressed by the Applicant. During the CMD, the Applicant consented to her partner Lewis Maclean representing her so as to assist her. Mr Maclean provided some further submissions and responded to specific queries. (Generally we do not distinguish in this Decision between the two of them, and refer throughout to "the Applicant" even if Mr Maclean provided the submission.) The Respondent was represented by Jordan Bird, In-Court Adviser, Hamilton Citizens Advice Bureau. The Respondent had intimated in advance, through Mr Bird, that she did not intend to appear.
8. We sought clarification from the Respondent's representative on the motion for suspension and the status of any application for rehousing. He provided the following further information:
  - a. The Respondent has been offered suitable rehousing into social housing, but the property is unfurnished. She has accepted the offer.
  - b. She has applied for a Community Care Grant to assist in her costs for furniture and white goods for the new property. It is estimated that, including factoring in time when challenges and queries are made to the grant application, that it will take 6-8 weeks for the application to be considered and hopefully awarded.
  - c. The Respondent will require assistance to remove from the Property and move into her new property. She is sourcing assistance with this.

- d. Though she has only been there since November 2021, the Respondent is settled at the Property and a move to a new property is a significant undertaking for her, especially in consideration of her health conditions.
- e. The Respondent has an advocacy worker assisting her with matters.
- f. In consideration of the time necessary to attend to all these matters, and considering the Respondent's health conditions, a "further suspension" of "6-8 weeks" was sought. The Respondent's representative confirmed that this was sought over and above the 30-day appeal period if the order for eviction was issued in standard terms. He confirmed that he sought eviction suspended to no earlier than 10-12 weeks from the date of the CMD.

We noted that the email received the day before the CMD detailed five physical conditions and three mental health conditions. No medical evidence was lodged in support of these conditions, but we accepted that the physical conditions would likely limit the Respondent's ability to move to a new property, and that the mental health conditions could further limit her ability to address and undertake the necessary arrangements on an urgent basis. (We do not see it necessary to disclose the medical information in detail in this Decision.)

- 9. We sought the Applicant's response on the motion and her reasons for seeking to sell. In regard to her reasons for seeking to sell:
  - a. She had lived in the Property before moving to the Western Isles for work.
  - b. Since moving to the Western Isles, she had met her partner and she had since moved in with him.
  - c. She wished to sell the Property and use any equity from it towards home improvements on her partner's property. These home improvements were not yet scheduled.
  - d. She did not expect "to make a profit" overall on the time she had let out the Property, in consideration of the management costs, maintenance costs, and her mortgage.
- 10. In regard to the Applicant's position on the motion for a suspension, the Applicant opposed the motion on the following grounds (which we noted were further relevant to our assessment of reasonableness):
  - a. She herself was suffering for a mental health condition, which related to an incident at work. She had not been able to work since the middle of 2024.
  - b. The general stress of dealing with the eviction process has further affected her mental well-being.
  - c. The application has taken a significant length of time to be considered to date and she was eager to have it brought to a conclusion.
  - d. She was unaware of the Respondent's physical health issues until the email of the previous day, and was now concerned about the Respondent's continued occupation of the Property as she does not believe its layout (which includes a set of stairs very close to the entrance) is suitable for her. She was now concerned about any liability she may have if the Respondent is injured.
  - e. Due to her own health conditions, and the medication she receives for them, she does not regard herself as being able to travel to the Property by herself, and would require her partner to drive her. On the understanding that there was no opposition to the application, she and her partner had arranged to travel between 14-18 April 2025 to the Property to make all

arrangements after vacant possession was obtained. They set these dates in good faith, on the understanding of how matters would progress in an unopposed application for eviction. They made these arrangements some time ago and have booked accommodation to cover these dates.

- f. Due to the distance to travel and her partner's work commitments as a managing director of his own firm (which included limited number of employees who can deputise for him if he is away, and a general increase in commitments as the tourist period builds up), she and her partner cannot think of any later date that they would be able to reschedule a visit to the Property.
- g. There has been a letting agent involved with the Property, but she has had issues with them over the years, and she is not satisfied to entrust the necessary work to them remotely. The Applicant would wish to be at the Property to view it and make any arrangements after vacant possession.

The Applicant expressed that she was most sympathetic to the Respondent's position and health concerns but she stressed that her own personal health concerns led her to oppose any suspension. (Again, we do not see it necessary to disclose the full medical information received from the Applicant in detail in this Decision.)

- 11. In regard to the further procedure on the opposed motion, the Applicant confirmed that she did not take any factual issue with the Respondent's submissions and was keen to avoid the need for a continuation to hear witness evidence. She wished matters concluded at the CMD. The Respondent's representative similarly made no motion for a continuation. The Respondent's representative expressed his own sympathy for the Applicant's health concerns but relied on the timeline for obtaining grant and other forms of assistance. Further he suggested that as the Applicant was seeking to sell, further delays were not unheard of when selling a property, and a further delay in commencing the sales process was not so significant.
- 12. Through the course of the CMD we sought greater detail from both parties and the above represents the consolidated information received by the conclusion of the discussion. By the conclusion, the Applicant's partner suddenly indicated that she consented to the suspension as it would be "the most straight-forward way of dealing with" the application for eviction. Notwithstanding this, we considered the motion for a suspension on its merits and did not regard it as a matter of consent.
- 13. No motion was made for expenses by either party.

### **Findings in Fact**

- 14. On 6 and 8 November 2021, the Applicant let the Property to the Respondent under a Private Residential Tenancy ("PRT") agreement with commencement on 9 November 2021 ("the Tenancy").
- 15. On 22 February 2024, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.

16. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 26 May 2024.
17. A copy of the Notice to Leave was served on the Respondent by recorded delivery on 23 February 2024 in accordance with the terms of the Tenancy Agreement.
18. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 5 June 2024.
19. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon North Lanarkshire Council on 3 June 2024.
20. The Applicant has instructed Homelink to act in marketing the Property.
21. The Applicant wishes to sell the Property with vacant possession in early course. She wishes to discontinue acting as landlord of the Property and invest any equity in home improvements at her partner's property where she currently lives.
22. The Respondent has made active attempts to obtain alternative social housing and has recently been offered a new tenancy.
23. The new tenancy offered to the Respondent is unfurnished and she requires further public support to fund furniture and white goods, and move into the new property (while also vacating the Property).
24. The Respondent has a number of physical and mental health conditions which render it more difficult for her to vacate the Property in a shortened time period.
25. The Applicant suffers from mental health conditions and is currently unable to work due to these health issues.
26. The Applicant's health issues restrict her ability to travel from her current address in the Western Isles to the Property, which journey is in any case a significant endeavour due to the distance and need to arrange ferry travel.
27. The Applicant currently requires the assistance of her partner in travelling to the Property.
28. The Applicant's partner is restricted in his ability to leave the Western Isles due to his business commitments and cannot, without significant notice and only at suitable times, assist the Applicant with a trip to visit the Property.

## Reasons for Decision

29. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
30. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1) *...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.*
31. The agreement with Homelink constitutes evidence under paragraph (3) and this was augmented by the submissions as to the intention to sell. On the basis of the submissions by the Applicant we agreed that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondent did not oppose the application and did not dispute that the material requirements of Ground 1 were satisfied.
32. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicant's reasons for wishing to sell, and these were not disputed by the Respondent. The Respondent's submissions on reasonableness raised significant issues but we were not satisfied that further evidence would assist and neither party sought to lead such evidence.
33. We were thus minded to grant the application, which was unopposed, and the sole issue of contention was whether a suspension should be granted and, if so, for how long. The Respondent's arguments were compelling. She has made efforts to be rehoused and, in advance of being able to move in, is willing to consent to eviction. Further, she has a plan in place for how, with her health and financial limitations, she may voluntarily remove from the Property but it will take longer than a standard 30 days. In balancing the various interests, we held that granting the order but with an 11-week suspension would afford the Respondent with a reasonable time to address all she required to address, while avoiding the public holidays at the start and end of May which may interfere with both parties' attempts to make necessary arrangements. We did consider the Applicant's arguments against a suspension but did not believe that the Applicant's specific difficulties in arranging travel bore sufficient weight. Though exacerbated by her

recent health issues, the core issue is that the Applicant requires to travel a significant distance to undertake her management of the Property. It is the Applicant who has chosen to be a landlord of a property some distance away from her home address and it is for her to overcome any management difficulties created by this, whether by making special arrangements to travel or identifying recovery agents who can give her the assistance she needs. The Applicant's general desire to see matters concluded as soon as possible were further not of a material weight when balanced against the Respondent's specific requirements.

34. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 20 May 2025.

### **Decision**

35. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated above.

### **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.**

Joel Conn

4 March 2025

**Legal Member/Chair**

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**Date**