



**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/24/2477**

**Re: Property at 29 Glen Road, Wishaw, ML2 7NL (“the Property”)**

**Parties:**

**Mrs Sandra Stallons, 4575 Lobos Avenue, Atascadero, 93422-2748, United States (“the Applicant”)**

**Mr David Knapp, Miss Margaret Brannan, 29 Glen Road, Wishaw, ML2 7NL; 29 Glen Road, Wishaw, ML2 7NL (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted**

**Background**

1. By application dated 14 June 2024 the applicant sought an order under section 51 of Private Housing (Tenancies) (Scotland) Act (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 28 August 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 28 February 2025 and appropriate intimation of that hearing was given to all parties.

## **The Case Management Discussion**

3. The Case Management Discussion (CMD) took place on 12 January 2024 via telephone case conference. The applicant did not attend the CMD but was represented by her solicitor, Mrs Sarah Lynch, Pomphreys, 36 Hill Street Wishaw ML2 7AT. The respondents took part in the telephone case conference call.
4. The tribunal explained the purpose of the CMD, the overriding objective of the tribunal and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties regarding the application.

## **Summary of initial discussions at CMD relating to matters agreed by parties**

6. The tribunal noted that the eviction was sought under and in terms of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016
7. That ground is currently in the following terms.

### ***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, .***

***(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***

8. On questioning the parties, it was clear that a number of factual issues were agreed.
9. There was no dispute that the parties were the landlord and tenant of a tenancy of the property which was a private residential tenancy under and in terms of the 2016 Act.
10. It was agreed that a Notice to Leave had been served on the respondent indicating that the applicants intended to seek an eviction order based on ground 1.
11. It was clear that they both agreed that the landlord is entitled to sell the property.
12. The applicant's solicitor explained that she intends to sell the property and has intended to do so for a considerable period of time. The respondents on being questioned regarding this aspect of the case accepted that the applicants have the intention to sell.
13. Therefore, the only matter which the tribunal required to address was whether or not it was reasonable to grant the eviction order.

#### **Agreed findings in fact arising from initial discussions**

14. The Applicant is the registered owner of the property.
15. The Applicant and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which commenced on 3 September 2019.
16. The tenancy was a private residential tenancy in terms of the Act.
17. The agreed monthly rental was £550 and is currently £666.
18. On 6 February 2024 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and the notice became effective on 2 May 2024. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
19. The applicant is entitled to sell the property.

#### **Discussions at CMD**

20. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the

that the landlord intends to sell the let property. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.

21. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
22. The only matter to be determined in this application is whether it is reasonable to grant the order.
23. The applicant intends to sell the property at market value or at least put it up for sale, within 3 months of the tenant ceasing to occupy.
24. The landlord's representative indicated that the landlord wished to sell the property and had wished to do so for a considerable period of time. She is currently living in the United States, is suffering ill health and wishes to sell to raise funds to cover ongoing and future care costs.
25. The tenants indicated that they resided at the property with their son, aged 8 years?. Since receiving the notice to leave, they have been trying to find other accommodation. Both are in employment.
26. They have registered with various local housing associations but have as yet received no offers of accommodation. They have also engaged with the local council's homelessness prevention team and have been given certain advice. They have been told that the council will only deal with them as a priority if and when an eviction order is granted and they are within a period of weeks of actually being evicted.
27. They confirmed they had no objection to the order being granted. And had written to the applicant's solicitor in August 2024 confirming that position.
28. The respondents considered that if the eviction order was to be granted, then it would assist them in their attempts to obtain more appropriate accommodation for them and their family.

## **Decision**

29. The order for possession was sought by the landlord on a ground specified in the 2016 Act and properly narrated in the notice served upon the tenant.

30. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.
31. The tribunal accepted the unchallenged evidence of the landlord that she intends to sell the property.
32. The ground for eviction was accordingly established.
33. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the landlord intends to sell the let property. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
34. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact
35. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

***“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.***

36. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
37. The tribunal finds that it is reasonable to grant the order.

38. The tribunal accepts that the landlord is entitled to sell the property and wishes to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. However, the tribunal accepts that the tenants are generally not opposed to the sale of the property and are willing to leave the property once they have obtained alternative accommodation.
39. The respondents have sought assistance from the local council and have been told that they will be fully assisted in obtaining alternative accommodation only when an eviction order is granted and they face actual homelessness.
40. The tribunal would hope that the applicant (via her solicitor) will allow the respondents sufficient and appropriate time to secure alternative accommodation without the necessity of enforcement of the order. The tribunal has indicated to the respondents that they may be able to apply for accommodation in the "Mid-Market Rent" sector which is now provided by a number of housing associations.
41. The council's homelessness prevention team have effectively advised the respondents that they will not obtain that assistance unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore ultimately (and almost counter intuitively) benefit the respondents in their attempts to obtain alternative suitable accommodation for themselves and their son.
42. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that the final order should be made at the CMD.

## **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.**

# Jim Bauld

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Legal Member/Chair

28 February 2025  
Date