

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Scotland)(Tenancies) Act 2016**

Chamber Ref: FTS/HPC/EV/24/0944

Re: Property at 75 Park Street, Airdrie, ML6 0JP (“the Property”)

Parties:

**Mrs Ileana Catalina Anton, Mr Robert Borzasi, 60 Hilfoot Road, Airdrie, ML6 9PW;
60 Hillfoot Road, Airdrie, ML6 9PW (“the Applicants”)**

Miss Samantha Todd, 75 Park Street, Airdrie, ML6 0JP (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application received on 22 February 2024 the applicants seek an order for repossession relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) Act 2016.
2. The following documents were lodged with the application
 - Copy tenancy agreement
 - Copy notice to leave
 - Copy correspondence regarding deposit
 - Pre action letter dated 5 January 2024

- Rent statement
 - Home report from Shepherd Chartered Surveyors
 - Section 11 notice
 - Letter from letting agent regarding delivery of the notice to leave.
3. A case management discussion was scheduled for 14 November 2024 by teleconference. Both applicants and the respondent were in attendance.
 4. The Tribunal discussed the notice to leave which had been lodged. The notice raised a number of issues. In particular Part 3 of the Notice had not been completed properly.
 5. The Tribunal considered that the error in Part 3 of the notice was not a minor error and a determination would be required as to whether it materially affected the effect of the notice.
 6. The applicants stated that the impact of the error in dates in the notice was minimal.
 7. In relation to the means of service of the notice- the respondent confirmed that the letting agent had attended the property in person to hand her the notice on 12 January 2024.
 8. The applicants stated that they wanted to sell the property in order to buy a family home. They stated that due to their financial circumstances and the mortgage and other costs associated with the property it was necessary to sell the property. The second applicant stated that there had been some issues with rent arrears however, the primary reason the applicants sought an eviction order was due to the need to sell arising from their own personal circumstances. The applicants referred to the homeowners report which had been lodged which was evidence of the intention to sell the property.
 9. The respondent opposed an order being granted on the grounds of reasonableness. She confirmed that she lived in the property with her 2 children aged 16 and 10. She stated that her 10 year old son has been diagnosed with ADHD. Her 16 year old also has some medical issues and is currently awaiting assistance from an educational psychologist. The respondent advised that she was not currently working and her sole income was from benefits. She stated that she had approached the local authority

- for assistance and that they were aware of the present process. The respondent stated that her preference was to remain in her current property.
10. As the application was opposed the Tribunal fixed a hearing in order to determine whether to grant an order for eviction. The Tribunal indicated that further information from the applicants in respect of the financial impact that the property was having on them would be useful. The Tribunal also set out that the respondent should lodge any relevant information such as medical reports in support of her defence of the application.

Hearing – teleconference – 27 February 2025

11. Both applicants and the respondent were in attendance. Neither party had lodged any additional documents since the cmd.
12. The applicants sought an order for eviction. The respondent stated that she no longer opposed an order for eviction being granted. She stated that she had sought advice from her local authority after the present application had been submitted. She had received advice from the housing department that if an order for eviction was granted she would be eligible for housing. She explained that she hoped to secure housing from the local authority that would be more suitable for her family. In particular she stated that her current home was not convenient to her children's schools and she hoped to obtain accommodation that was closer to the children's schools.
13. The second applicant confirmed that his intention remained to sell the property. He stated that he owned the property and one other property. The first applicant also owned a property. They planned to sell all 3 properties in order to purchase a family home. The second applicant advised that he did not own any other rental properties at present.
14. In relation to the validity of the notice to leave the second applicant stated that he had done his best to follow the legal requirements for the notice and believed that it was valid.

Findings in fact and law

15. The first applicant and the respondent entered into a private rented tenancy agreement with a commencement date of 28 July 2023.
16. The second applicant is the sole owner of the property.

17. The second applicant is in a relationship with the first applicant.
18. The first applicant acted as the second applicant's agent in respect of the tenancy agreement.
19. A valid notice to leave was served on the respondent.
20. The second applicant intends to sell the property.
21. The applicants intend to use the proceeds from the sale of the property to purchase a family home.
22. The respondent has sought housing advice from the local authority and has submitted an application for housing.
23. The respondent seeks accommodation which is more suitable to her family's needs and located a reasonable distance from her children's schools.
24. The respondent resides with her 2 children aged 16 and 10.
25. The respondent does not oppose an order for eviction being granted.
26. It is reasonable to grant an order for eviction.

Reasons for the decision

27. The Private Housing (Tenancies)(Scotland) Act 2016 states:

52 Applications for eviction orders and consideration of them ...

(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.

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) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply

...

(4) *The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

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...*

(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 purposes of subsection (4), it is to be assumed that the tenant will receive the Notice to leave 48 hours after it is sent.*

28. The respondent does not dispute the validity of the notice to leave. The notice specified ground 1 in one of the tick boxes at part 2 as a ground that would be relied upon. Part 3 of the notice requires the landlord to set out the details and evidence of the ground. The applicants had completed this section incorrectly stating: *“Please issue notice to leave to Samantha as of today 12th of January for the 84 days required by law”*
29. Part 4 of the notice is headed “The end of the notice period.” This section had been properly completed and specified a date of 12 February 2024. As the tenancy was less than six months old the correct notice period was 28 days. Accordingly the correct date had been inserted in part 4.
30. In considering whether the errors in the notice are such that the notice to leave is invalid the Tribunal followed the approach set out in *Holleran v McAlister* FTS.EV.18.3231. In that case the Tribunal set out that the test of

whether a notice was invalid depends on whether the errors “materially affect the effect” of the notice.

31. In determining whether the error in the notice materially affects the notice the Tribunal took into account that the ground relied upon, ground 1- the landlord intends to sell - is largely self-explanatory and therefore the error at part 3 would not necessarily have impacted the respondents understanding of the ground being relied upon. The Tribunal also gave particular weight to the fact that the correct date had been specified at part 4 of the notice and determined that the respondent had been given the correct period of notice. In the circumstances the Tribunal determined that the error in the notice did not materially affect the effect of the notice and found the notice to be valid.

32. The respondent accepted that the notice had been hand delivered to her by the letting agent, the Property Bureau on 12 January 2024.

33. Ground 1 in schedule 3 of the 2016 Act 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.

(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.

34. The Tribunal accepted the second applicant's evidence that he intended to sell the property. This was not disputed by the respondent.
35. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. It is well established that in determining whether it is reasonable to grant an order all relevant circumstances are taken into account, including personal circumstances, *Barclay v Hannah* 1947 SLT 235 and *Cumming v Danson* 2 ALL ER 653. The Tribunal had regard to the Upper Tier Tribunal's decision in an eviction application also relying on ground 1 *Caroline Manson and David Downie against Virginie and Iain Turner* UTS/AP/23/0018 – in determining whether it was reasonable to grant an order the Tribunal was required not only to identify the factors which it had taken into account, but also to explain why it had given more weight to those factors supporting the conclusion which it reached, relative to those which pointed the other way. Parties should be left in no doubt as to why the Tribunal reached the conclusion that it did. In assessing whether it is reasonable to grant an order all available facts relevant to the decision required to be considered and weighed in the balance, for and against.
36. The Tribunal took into account the application and various documents that had been lodged by the applicants. The Tribunal also took into account the parties' oral evidence at the CMD and hearing.
37. The Tribunal gave significant weight to the fact that the respondent did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. The Tribunal accepted that the respondent had sought assistance from the local authority and hoped to obtain more suitable accommodation for her family.
38. The Tribunal accepted the second applicant's evidence that the applicants intended to sell the property and that they intended to use the proceeds towards buying a family home. The applicants had submitted evidence in the form of a homeowners report to support their position. The applicants had not provided detailed evidence regarding the impact of the tenancy on their financial circumstances.
39. In the absence of opposition the Tribunal determined that it was reasonable to grant an order for eviction. The Tribunal sought parties' views as to

whether they sought to suspend the date of execution of the order. Neither party sought a suspension of enforcement.

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.

Mary-Claire Kelly

Legal Member/Chair

27 February 2025

Date