



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4148**

**Re: Property at 17 Kirke Park, Methil, KY8 2JX (“the Property”)**

**Parties:**

**Mrs Kathryn McKenna, 72 Overton Drive, London, E11 2NW (“the Applicant”)**

**Courtney Lindsay, Leon Bremner, 17 Kirke Park, Methil, KY8 2JX (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision (in absence of the Respondents)**

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

**Background**

1. An application was received from the Applicant’s solicitor on 5 September 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 31 March 2021.
  - (ii) Copy notice to leave addressed to the Respondents dated 16 May 2024 citing ground 1, and stating the date before which proceedings could not be raised to be 11 August 2024, together with proof of service by email.

- (iii) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council, together with proof of sending by email on 5 September 2024.
  - (iv) Letter dated 16 May 2024 from Your Move addressed to the Respondents confirming that they had received instructions from the Applicant to sell the property.
3. The application was accepted on 2 October 2024.
4. Notice of the case management discussion (CMD) scheduled for 3 April 2025, together with the application papers and guidance notes, was served on the Respondents by sheriff officer on behalf of the tribunal on 18 February 2025. The Respondents were invited to submit written representations by 8 March 2025.
5. No written representations were received from the Respondents prior to the CMD.

#### **The case management discussion**

6. A CMD was held by teleconference call on 3 April 2025. The Applicant was represented by Mr Jackson Deane of Bannatyne Kirkwood France solicitors (BKF). The Respondents were not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondents had been detained. They did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from them.
7. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondents.

#### **The Applicant's submissions**

8. Mr Deane told the Tribunal that the Respondents had been given the keys to a new property by Fife Council. This had been confirmed to BKF by Fife Council. He believed that the Respondents were due to move into the property on 7 April 2025.
9. Mr Deane asked the Tribunal to grant an eviction order under ground 1 despite this. While the Respondents had secured a new property, they had said they would move in prior to the CMD. Their moving date had been delayed after they

received the keys, however, because they were not satisfied at the state of the property and wished to make changes before they moved in. The Applicant was concerned that there may be further delays and therefore wished to seek an eviction order, rather than withdrawing the application, to protect her position.

10. Mr Deane confirmed that the Applicant still intended to sell the property within 3 months of the Respondents ceasing to occupy it. He said that the Applicant owned 15 rental properties either solely or jointly, and was looking to sell the property as part of a review of her portfolio. The Applicant considered that for financial reasons, this was a good time to sell this particular property, and was considering the possibility of selling some of her other properties.
11. Regarding the Respondents, Mr Deane said that it was his understanding that both Respondents were in employment and did not have any health conditions, to the knowledge of the Applicant. He did not believe that there was anyone else living in the property with the Respondents. He had no further information about their circumstances.

## **Findings in fact**

12. The Tribunal made the following findings in fact:

- The Applicant owns the property.
- The Applicant is the registered landlord for the property.
- There is a private residential tenancy in place between the parties, which commenced on 31 March 2021.
- The Notice to Leave was validly served on the Respondents by email on behalf of the Applicant on 16 May 2024.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondents ceasing to occupy it.

## **Reasons for decision**

13. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
14. The Tribunal firstly considered whether it should refuse the application on the grounds that the Respondents had secured a new property and were due to move into this within a few days. It noted that as at the date of the CMD, it had been almost 11 months since the Notice to Leave had been served, and 7

months since the application was received. The Tribunal also noted what Mr Deane had said regarding the delay which had already occurred regarding the Respondents' moving date, and the Applicant's concern that there could be a further delay. The Tribunal decided on balance that in these circumstances, it should not refuse the application, but should make a decision on its merits.

15. The Tribunal considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

***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, 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.*

16. The Tribunal determined that, as the owner of the property, the Applicant is entitled to sell it. Having had regard to the oral evidence submitted on behalf of the Applicant, and the letter from Your Move dated 16 May 2024 (and in the absence of any opposition by the Respondents), the Tribunal also found that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it.

17. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.

18. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondents had not opposed the eviction application, and had secured a new property, which they were due to move into imminently.

19. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

### **Decision**

The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the property.

### **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.**

**Sarah O'Neill**

3 April 2025

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**Legal Member/Chair**

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**Date**