

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

Chamber Ref: FTS/HPC/EV/24/3093

Re: Property at 29 Esslemont Drive, Inverurie, AB51 3UP (“the Property”)

Parties:

Mr Michael Bruce, 2 Burnbank, Market Street, Inch, AB52 6HN (“the Applicant”)

Miss Taylor Milne, 29 Esslemont Drive, Inverurie, AB51 3UP (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and James Battye (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.

Background

1. By application dated 5 July 2024 the applicant seeks an order for eviction, relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Scotland)(Tenancies) Act 2016.
2. The applicant lodged the following documents in advance of the case management discussion (“cmd”):
 - Copy tenancy agreement
 - Notice to leave with proof of service
 - Mandate from Graham Bruce authorising the applicant to act on his behalf in relation to the property
 - Section 11 notice to local authority with proof of delivery

- Correspondence from selling agents confirming instruction to sell

Case management discussion - 26 March 2025 – teleconference

3. A case management discussion (“cmd”) took place via teleconference on 26 March 2025. The applicant was represented by, Mr Kingdon, Head of Residential Leasing, Peterkins Solicitors, Estate Agents and Financial Advisors. The respondent was not present or represented. The Tribunal was satisfied that the respondent had been properly notified of the cmd in terms of rule 24.1. Sheriff Officers had served papers by letterbox delivery on 18 February 2025. The Tribunal proceeded with the discussion in her absence in terms of rule 29.
4. Mr Kingdon sought an order for eviction. He confirmed that the respondent had moved into the property on 8 June 2018. He stated that the applicant had a genuine intention to sell the property as he was moving to Canada. Mr Kingdon referred to a letter from the property manager at Peterkins dated 22 March 2024 that had been submitted. The letter confirmed that Peterkins had been instructed to sell the property. Mr Kingdon stated that the applicant owned another property which was also on the market. Mr Kingdon referred to the notice to leave which had been served on 27 March 2024. He stated that a considerable amount of time had passed since the notice had been served. He stated that the property would be placed on the market in the event that an order was granted and that the applicant had been advised that failure to market the property may lead to a wrongful termination application being submitted.
5. In relation to the respondent’s personal circumstances Mr Kingdon stated that the property was managed by the applicant. He had advised Mr Kingdon that the respondent resided in the property with her two children. The ages of the children were not provided. He stated that there had been an issue with rent arrears with the amount of £1879.19 currently outstanding. He stated that the applicant believed that the respondent is still residing in the property however there is little communication between the parties.

Findings in fact and law

6. Parties entered into a private rented tenancy agreement with a commencement date of 8 June 2018.

7. The property is owned by Graham Bruce, the applicant's father.
8. Graham Bruce has authorised the applicant to act on his behalf in relation to the management of the tenancy and the property.
9. The applicant is the landlord of the property.
10. The applicant intends to sell the property.
11. The respondent has not lodged any opposition to the application.
12. It is reasonable to grant an order for eviction.

Reasons for the decision

13. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

14. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.
15. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account the oral submissions made by Mr Kingdon at the cmd.
16. Ground 1 in schedule 3 of the Private Housing (Tenancies) (Scotland) 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.

17. The Tribunal accepted Mr Kingdon's undisputed submission that the applicant intended to sell the property. This was supported by the letter from the property manager at Peterkins confirming that they had been instructed in relation to the sale of the property.

18. 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. 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.

19. The Tribunal took into account that the applicant sought to sell the property as a result of his decision to relocate to Canada. The Tribunal gave weight to the fact that the respondent had not attended the cmd or made any attempt to oppose the application. The Tribunal considered that had the respondent sought to defend the application her personal circumstances and in particular the length of time that she had occupied the property and the fact that she resided with her two children would have been a weighty factor. However, in the absence of the respondent lodging any supporting documents or attending the cmd to give evidence to oppose an order the Tribunal determined that on balance it was reasonable to grant an order for eviction.

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

26 March 2025

Date