

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 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/3490

Re: Property at 113 Marmion Drive, Glenrothes, KY6 2PQ (“the Property”)

Parties:

Mrs Gillian MacCunn, 5 Queen Street, Dunshalt, Cupar, KY14 7HD (“the Applicant”)

Mr Scott Hume, 113 Marmion Drive, Glenrothes, KY6 2PQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 30 July 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, namely an email from Estate Agents, confirming that they would be acting for the Applicant in the proposed sale.

2. Following initial procedure, on 22 August 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 17 March 2025 was served on the Respondent by way of Sheriff Officer on 10 February 2025. In terms of said notification, the Respondent was given until 1 March 2025 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference call on 17 March 2025 at 10am, attended only by the Applicant's representative, Ms Simone Callaghan of TC Young, solicitors. Commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but he did not do so.
5. Following introductions and introductory remarks by the Legal Member, Miss Callaghan addressed the application and reference was made to the supporting documentation lodged. She confirmed that the tenancy was a Private Residential Tenancy which had commenced on 31 July 2020 and that the eviction is sought under Ground 1 of the 2016 Act on the basis that the Applicant wishes to sell the Property. The Applicant has already instructed Estate Agents to act in the sale. As to reasonableness considerations, Ms Callaghan confirmed that the reason the Applicant wishes to sell is to repay her debts. There is no mortgage over this Property, so there will be sufficient sale proceeds to pay off her debts. The Applicant lets out six other properties too but they all have mortgages outstanding on them, meaning that sale proceeds would be limited and would not allow the Applicant to pay off her other debts. This is the reason the Applicant has decided to sell this Property at the present time. The Applicant is also 62 years old, has various health issues and is retiring which is affecting her finances, due to having less disposable income. She originally acquired title to the Property as part of a divorce settlement with her husband, who was nearing the end of his life and it was agreed that she would take on the tenancy.
6. As to the Respondent, Ms Callaghan confirmed that the Applicant had originally informed him of her intention to sell in 2023 when he advised that he was seeking accommodation with Fife Council. However, the Applicant was then contacted by North Lanarkshire Council in June 2024 and they advised that the Respondent had made an application to them for housing. It was the Applicant's understanding that NLC had accepted his application but told the Respondent that he would need to provide them with an eviction order from the Tribunal before he would be housed. Ms Callaghan stated that it is therefore likely that the granting of an eviction order would assist the Respondent obtain social housing. He is aged between 40 and 60 years old and was a self-employed joiner, although recently has started to be paid

Universal Credit. Ms Callaghan does not know the circumstances of this but it is assumed that he may no longer be in employment.

7. Ms Callaghan also referred to the conjoined payment application, also calling for CMD today, and stated that the current level of rent arrears is £5,940. The Applicant has been communicating with the Respondent regarding the rent arrears situation but has not had any recent discussions with him regarding the eviction application. However, Ms Callaghan pointed out that the Respondent is aware of the CMD today and has chosen not to make any representations or attend the CMD. The Respondent is ex-military and has recently enlisted the help of an organisation 'Help for Heroes' who are assisting him in relation to the rent arrears and there has been a payment plan agreed with the Applicant. One payment of £450 from the Respondent's Universal Credit was made on 14 February 2025, since the date of the updated rent statement lodged with the Tribunal. The current arrears figure quoted of £5,940 takes into account that payment of £450. Prior to that, it was noted that the last payment to the rent account had been in March 2024. Ms Callaghan stated that the reason for the recent proposals in respect of the rent arrears is likely due to the difficulties that the Respondent may otherwise encounter in respect of his housing application due to the rent arrears. Fife Council had apparently told the Respondent this when he approached them in 2023.
8. Ms Callaghan submitted that, in all these circumstances, the eviction ground was met and it was reasonable for the Tribunal to grant an order.
9. The Tribunal Members conferred and subsequently confirmed that the Tribunal would grant the eviction order sought. Ms Callaghan was thanked for her attendance and for the detailed information she had provided in respect of the application.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 31 July 2020.
3. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession, having already instructed an estate agent to act in the proposed sale.
4. The Applicant informed the Respondent of her intention to sell the Property in 2023, in advance of serving formal notice.
5. The Respondent allowed access to the Property in February 2024 for the purposes of valuation.

6. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was sent by email to the Respondent on 19 April 2024, in accordance with the terms of the tenancy agreement.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 16 July 2024.
8. The Tribunal Application was submitted on 30 July 2024.
9. The Respondent remains in possession.
10. The Applicant's reasons for wishing to sell are due to her personal circumstances and financial position.
11. There was a background of rent arrears and the Respondent stopped paying rent altogether around the time formal notice was served in April 2024 and substantial rent arrears accrued.
12. One payment of £450 was made towards rent via the Respondent's Universal Credit on or around 14 February 2025.
13. The current balance of rent arrears owing is £5,940.
14. The Respondent is understood to have made application to a local authority in June 2024 for social housing but has not yet secured same.
15. The Respondent did not lodge any written representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant's representative.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent and that the

Applicant's intention to sell is due to her age, personal and financial circumstances. She now has a reduced income, due to retiring, some health issues and requires to recover the free proceeds of sale in order to pay off some other debt. The Tribunal was satisfied from the information provided by the Applicant's representative that the Applicant has a genuine intention to sell as soon as possible, for the reasons stated and that the estate agents instructed had already accessed the Property, for purposes of valuation, with the agreement of the Respondent. The Tribunal noted that there was a history of rent arrears and that the Respondent had stopped paying his rent altogether almost a year ago. Current rent arrears are almost £6,000. Although one recent payment of £450 towards rent had been paid, the Tribunal considered that the rent arrears situation also had a bearing on reasonableness. The Respondent is understood to have made application for local authority housing to at least one local authority and to have been informed by the local authority that his housing application would not be further progressed until an eviction order was granted. The Applicant's representative had addressed the Tribunal as to the background circumstances of the Respondent, as far as known to them and it was noted that he is at least 40 years and was previously a self-employed joiner, although is now in receipt of Universal Credit. The Respondent was aware of the Tribunal proceedings and had chosen not to make written representations nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.

4. The Tribunal did not have any material before it to contradict the Applicant's position, nor indicate that the Respondent was opposing the eviction. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

17 March 2025
Date