

**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/24/4024**

**Re: Property at 29 Kippielaw Park, Mayfield, EH22 5AL (“the Property”)**

**Parties:**

**Patrick Nevin, 1 Cowpits Crescent, Whitecraig, EH21 8TE (“the Applicant”)**

**Vicky Blackhurst, 29 Kippielaw Park, Mayfield, EH22 5AL (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 21 November 2022.
2. The application was dated 30 August 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 dated 3 May 2024 and said to be served upon the Respondent by Sheriff Officer service on 8 May 2024 (as permitted by the Tenancy Agreement). The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice made reference to a “firm decision that I wish to sell the property” and to attaching instructions to an estate agent

(though it was not clear from the application papers what document this referred to). The Notice to Leave intimated that an application to the Tribunal would not be made before 1 August 2024.

4. The application papers included a marketing agreement with McEwan Fraser Legal dated 28 August 2024 as well as an affidavit from the Applicant on his reasons for wishing to sell (discussed in more detail below).
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Midlothian Council on 30 August 2024 was included in the application papers.
6. The application papers including correspondence with the Respondent on rent arrears (including pre-action protocol letter). Prior to the case management discussion ("CMD"), the Applicant's agent lodged a rent statement showing rent arrears as at 21 March 2025 as £19,161.82. No Notice to Leave on rent arrears was lodged or referred to however.

### **The Hearing**

7. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 2 April 2025 at 14:00. We were addressed by Rosaleen Doyle, solicitor, McEwan Fraser Legal for the Applicant. There was no appearance for the Respondent.
8. We sought confirmation from the Tribunal's clerk as to any contact from or on behalf of the Respondent but there had been none (in regard to this application or a conjoined application on arrears under reference CV/24/4603). The Applicant's agent confirmed that there had been very little contact with the Respondent in recent months. The last contact was when she had been present during a gas safety inspection in January 2025. At the conclusion of the inspection, during which the Respondent had been noted as appearing "quiet", the Applicant's partner (who had also been in attendance at the inspection) mentioned that there were ongoing applications before the Tribunal but the Respondent had made no comment in response. The Applicant's agent said that there had also been local "word of mouth" that furniture had been being moved out of the Property. (She accepted that if this was occurring, it had not occurred as of January 2025, as the Respondent had appeared still to be living at the Property and that it was furnished during that inspection.) In all the circumstances, and having not commenced the CMD until 10:05, we were satisfied to hear the application in the absence of the Respondent. (In any event, neither the Respondent nor anyone on her behalf sought to dial into the CMD call at any time before its conclusion.)
9. We sought further information from the Applicant's agent on the reasons for the intended sale. The explanation made out in the affidavit, as augmented by oral submissions, was as follows:
  - a. The Applicant is 64.

- b. The Property is one of five rental properties that he owns for income. His long-term intention was that these would eventually be sold to provide income for his retirement.
  - c. Given the substantial arrears on the Property, the Applicant is now convinced that selling his portfolio is the correct decision for him and, though earlier than he had intended, he is starting by selling the Property once he has vacant possession.
  - d. There is no mortgage over the Property but, in light of the arrears, the Property has been a financial drain and a cause for concern for the Applicant over the past few years.
10. In regard to reasonableness the Applicant's agent gave the following submissions:
- a. The Respondent has been in arrears for the full duration of the Tenancy. The rent was £800/m payable on the 21<sup>st</sup> of the month from 21 November 2022 and she paid £500 on each of 16 January and 23 January 2023 and the Applicant received payments from Universal Credit of £800 on each of 2 February, 2 March and 31 March 2023 and a further £638.18 on 2 May 2023, with no further payments since.
  - b. The arrears at the date of the Notice to Leave were over £10,000 and now stand at £19,161.82 (to cover the period to 20 April 2025).
  - c. Due to the lack of communication from the Respondent, her financial and personal circumstances are not known, but the Applicant understood:
    - i. That she had been in employment. No information is known as to why Universal Credit payments started and then stopped.
    - ii. That she has two children, one believed to be around 14 and one around 18. They had been living at the Property but it is not known whether they still live with the Respondent.
    - iii. The Respondent's mother is believed to live nearby but there is no other information suggesting that the Property is especially suitable for the Respondent and her family.
  - d. The Property is not adapted for the use of the Respondent or her family.
  - e. The Property is a three-bedroom house.
  - f. Further to previous inspection visits, the Property was found to be kept in a poor and untidy condition, with rubbish strewn on the floor in a number of rooms.
11. No motion was made for expenses.

### **Findings in Fact**

12. On 23 November 2022, the Applicant let the Property to the Respondent under a Private Residential Tenancy ("PRT") agreement with commencement on 21 November 2022 ("the Tenancy").
13. On 3 May 2024, the Applicant's legal agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.

14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 1 August 2024.
15. A copy of the Notice to Leave was served on the Respondent by Sheriff Officer on 8 May 2024 in accordance with the terms of the Tenancy Agreement.
16. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 30 August 2024.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Midlothian Council on 30 August 2024.
18. The Applicant has instructed McEwan Fraser Legal to market the Property.
19. The Applicant wishes to sell the Property with vacant possession in early course. He wishes to discontinue acting as landlord of the Property and sell the Property as part of a long-term plan to fund his retirement by sale of his property portfolio.
20. The Respondent has resided at the Property with her children though the current occupancy of the Property is not known.
21. As of 2 April 2025, the Respondent is in arrears of rent, for the period to 20 April 2025, of £19,161.82, being over 23 months of rent in arrears.
22. The Respondent has kept the Property in a poor and untidy condition internally.
23. On 20 February 2025, a Sheriff Officer acting for the Tribunal intimated the CMD of 2 April 2025 upon the Respondent.

### **Reasons for Decision**

24. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent. In any case, she did not appear nor extend a defence in regard to the validity of the Notice.
25. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...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.*

26. The agreement with McEwan Fraser Legal constitutes evidence under paragraph (3) and this was augmented by the affidavit and oral submissions as to the intention to sell. On the basis of the submissions for the Applicant we agreed that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondent did not appear nor extend a defence challenging the ground for eviction.
27. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicant's reasons for wishing to sell and further accepted it was reasonable to wish to sell given the financial issues created by the arrears, and the condition of the Property. In the absence of an appearance for the Respondent, we were provided with nothing to counter the Applicant's submissions on reasonableness to evict but in any case the Applicant's arguments were substantial, especially in regard to the level of arrears. We were satisfied that it was reasonable to evict at this time.
28. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time in normal terms.

## **Decision**

29. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act.

## **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.**

Joel Conn

2 April 2025

**Legal Member/Chair**

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**Date**