

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/24/4695

Re: Property at 8 Roadside Cottages, Kinneff, Montrose, DD10 0TB (“the Property”)

Parties:

Mr Robert Fisher, Mrs Louise Fisher, 5 Jalan Rosa 3, Idamansara, Changkat Semantan, Kuala Lumpur, Malaysia (“the Applicant”)

Ms Gemma Ogston, 8 Roadside Cottages, Kinneff, Montrose, DD10 0TB (“the Respondent”)

Tribunal Members:

Alison Kelly (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 the order for eviction should be granted.

Background

1. On 10th October 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 18th May 2018 and a rent of £430 per month;
 - ii. Copy Notice to Leave dated 19th April 2024;
 - iii. Copy email dated 19th April 2024 to the Respondent serving the Notice to Leave;

- iv. Section 11 Notice and proof of service;
 - v. Letter from Raeburn, Christie, Clark & Wallace, Solicitors, dated 12th September 2024 confirming instructions to sell the property.
 - vi. Rent Statement
3. On 24th October 2024 the Applicant's solicitor sent an email to the Tribunal confirming that the arrears had been cleared and withdrawing the payment action which had accompanied this eviction action.
 4. The Application was served on the Respondent by Sheriff Officers on 25th February 2025.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented Mr Doran of Raeburn, Christie, Clark & Wallace, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Mr Doran sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that the Applicants wish to sell the property, he confirmed that they intend to do so, or at least out it up for sale, for market value, within three months of the Respondent vacating. He referred to the letter from his firm dated 12th September 2024 confirming instruction.
8. The Tribunal were satisfied that the ground had been established, and asked Mr Doran to address the Tribunal on reasonableness. He said that the applicants are selling as they will be returning to live in the UK and they wish to get out of the rental market. He said that the Respondent lives alone in the property, which is a one bedroomed flat. It has not been adapted or converted in relation to any disability of the Respondent. He said that she lives there with two dogs, which the Applicants did not give permission for. The Applicants are concerned that the dogs Have caused damage to the property. There are some rent arrears. He said that he spoke to the Respondent some time ago and she confirmed that she was actively looking for alternative accommodation, but had been advised by the local authority that they could not assist until she had received an eviction order.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property commencing 18th May 2018 and a rent of £430 per month
- b. A Notice To Leave, dated 19th April 2024, was served timeously and correctly;
- c. A section 11 notice was served on the local authority;
- d. Letter from Raeburn, Christie, Clark & Wallace, Solicitors, dated 12th September 2024 confirming instructions to market the property.
- e. The Application was served on the Respondent by Sheriff Officer on 25th February 2025;
- f. The Applicants intend to sell the let property for market value, or at least put it up for sale within three months of the Respondent seeking to occupy;
- g. The applicant lives alone in the property;
- h. The applicant does not have any disability which has meant that the property has had to be adapted to meet her needs.

Reasons for Decision

9. Ground 1 of Schedule 3 of the Act states as follows:

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,

(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.

10. The Tribunal are satisfied that the ground of eviction has been established by the oral submission of the Applicants' solicitor and the production of the letter from his firm dated 12th September 2024.

11. The Tribunal is also satisfied that it is reasonable to grant the order as there are no children who will be affected and the Respondent does not have a disability which would need to be considered. In addition, the Applicants' solicitor confirmed that the Respondent said that she needed an eviction order before the local authority would look at rehousing her, and she has not engaged with the tribunal nor attended the CMD.

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.

A. Kelly

25th April 2025

Legal Member/Chair

Date