



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/24/4103

Re: Property at 2 Woodside Crescent, Nairn, IV12 4SX ("the Property")

Parties:

Ms Carol More, 5 Sutors View, Nairn, IV12 5BT ("the Applicant")

Miss Lauren Michie, 2 Woodside Crescent, Nairn, IV12 4SX ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD") which took place by telephone conference on 1 May 2025, the Applicant was in attendance and was represented by Mr McTigue of Jackson Boyd Solicitors. The Respondent was not present or represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29. Indeed the Respondent had answered the Application by lodging with the Tribunal written submissions dated 20 March 2025.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The application concerns a Private Residential Tenancy ("PRT") entered into between the parties relative to the Property that commenced on 27 July 2020.
- iii. On 27 April 2024, the Applicant served on the Respondent by email and recorded delivery post a Notice to Leave requiring the Respondent remove from the Property by 23 July 2024 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").

- iv. The Applicant has served on Highland Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Mr Mc Tighe and the Applicant made the following oral submissions:-

- i. A previous Notice to Leave was served on 28 December 2023 addressed to the tenants under the PRT, being the Respondent and Mr Ryan Spruce. The email address stated within the PRT was that of Mr Spruce who replied by email on 29 December 2023 advising that he no longer lives at the Property, having moved out in May 2023 and asking that his name be removed from the Notice to Leave and the PRT.
- ii. Subsequently, a fresh Notice to Leave was served on the Respondent using an alternative email address provided and also by recorded delivery post.
- iii. With regard to the reasons for the Applicants wishing to sell the Property, Mr McTigue stated that there has been a decline in the Applicant's health, and she no longer wishes to be a landlord. She does not rent out any other residence and wishes to focus on her health.
- iv. The Applicant explained that she was diagnosed with Multiple Sclerosis in 2018 which affects her mobility and balance. She also suffers from severe fatigue which has got worse over the last couple of years and she is currently undertaking fatigue management.
- v. She had many sleepless nights whilst she tried to recover possession from a tenant of the property in which she now resides and ended up staying with relatives for nine months until possession was recovered.
- vi. Failure to obtain the necessary sleep can affect what the Applicant does on a day-to-day basis.
- vii. She wants to work for as long as she can.
- viii. She was previously employed by John Dewar & Son as a Distillery Manager.
- ix. Following her diagnosis a new role was created for her being a Process Improvement Manager which allows her to work across the various sites of the business and from home as needed in order to help her manage her fatigue.
- x. When employed as the Distillery Manager she required to be present on site and was therefore allowed to stay in the distillery house.
- xi. In around 2018/2019 following her diagnosis the Applicant purchased the property in which she now resides just in case she was no longer able to work and needed somewhere to stay. At that point she rented the property out.
- xii. However, when her change of role took place she required to vacate the distillery house for the new Distillery Manager to move in. Accordingly, she required to raise eviction proceedings to recover possession of that property.
- xiii. With regard to the Respondent's written submissions, there have been no discussions with her. She has not been in touch but the Applicant remains sympathetic to her position and is happy to give her more time to remove if required.
- xiv. The Applicant believes the Respondent works in a local care home.
- xv. To the best of her knowledge, neither the Respondent nor her 7 year old child suffer from any disabilities.
- xvi. The Property comprises two bedrooms and is semi-detached.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property which comprises 2 bedrooms and is semi-detached.

- ii. The application concerns a PRT entered into between the parties relative to the Property that commenced on 27 July 2020.
- iii. On 27 April 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 23 July 2024 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- iv. The Applicant has served on Highland Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The Applicant has approached R&R Urquhart, Solicitors, Nairn to sell the Property and their letter of 4 October 2024 is sufficient evidence of the Applicant's intention to sell the Property.
- vi. The Applicant was diagnosed with Multiple Sclerosis in 2018.
- vii. The Applicant suffers from severe fatigue which has got worse over the last couple of years and she is currently undertaking fatigue management.
- viii. Failure to obtain the necessary sleep can affect what the Applicant does on a day-to-day basis.
- ix. The Applicant wants to work for as long as she can.
- x. She was previously employed by John Dewar & Son as a Distillery Manager.
- xi. Following her diagnosis a new role was created for her being a Process Improvement Manager which allows her to work across the various sites of the business and from home as needed in order to help her manage her fatigue.
- xii. When employed as the Distillery Manager she required to be present on site and was therefore allowed to stay in the distillery house.
- xiii. In around 2018/2019 following her diagnosis the Applicant purchased the property in which she now resides just in case she was no longer able to work and needed somewhere to stay. At that point she rented the property out. However, when her change of role took place she required to vacate the distillery house for the new Distillery Manager to move in. Accordingly, she required to raise eviction proceedings to recover possession of that property to live in as her own home. The Applicant had many sleepless nights whilst she tried to recover possession from a tenant of that property and ended up staying with relatives for nine months until possession was recovered.
- xiv. There have been no discussions with the Respondent relative to her removal from the Property.
- xv. The Respondent continues to reside in the Property with her 7 year old child.
- xvi. The Respondent has sought to find alternative accommodation in the public and private sectors without success.
- xvii. The Respondent is considering buying a property having been unable to find rented accommodation in her preferred location.

Reasons for decision

The factual background narrated by the Applicant within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal. The Tribunal also noted the Respondent's position as narrated in her written submissions dated 20 March 2025.

Strictly, Mr Ryan Spruce is still a tenant of the Applicant under the PRT. The application has not been raised against or served on him. However, given his email of 29 December 2023 stating he moved out the Property in May 2023 and wished his name removed from the tenancy documents, he could have no objection to any eviction order being granted.

The application proceeds upon Ground 1 of Schedule 3 of the 2016 Act.

Ground 1 of Schedule 3 of the 2016 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."

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a letter of R&R Urquhart, Solicitors, Nairn dated 4 October 2024 in terms of which they narrate the basis upon which they would market the Property for sale. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account the following:-

- i. The Applicant's diagnoses in 2018 and the resultant severe fatigue that she can experience.
- ii. The Applicant's desire to prioritise her health and wellbeing and her ability to keep working for as long as she can do so.
- iii. The stress and loss of sleep that she endured recovering possession from a tenant of the property in which she now lives and her desire not to continue as a landlord with the demands that requires.

On that basis the Tribunal considered it reasonable to grant an eviction order in terms of Ground 1 of Schedule 3 of the 2016 Act.

Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017.

The Tribunal concluded that (i) having regard to the Respondent's circumstances and the efforts she is making to secure alternative housing in her preferred area, and (ii) taking into account the Applicant's statement that she has no objection to suspension of the order being delayed, it is reasonable to provide the Respondent with an extended period of time to secure

alternative accommodation. Accordingly, the Tribunal determined that the enforcement of the order be suspended until 31 July 2025.

Decision

The Tribunal granted an eviction order against the Respondent in favour of the Applicant with execution of that order delayed until 12noon on 31 July 2025.

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.

Legal Member/Chair

1 May 2025
Date