



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/24/4084

Re: Property at 55/2 East Main Street, Whitburn, EH47 0RF (“the Property”)

Parties:

Mrs Gwen Kempik, 4 Bridgend, East Whitburn, West Lothian, EH47 0JA (“the Applicant”)

Mr Andrew Watson, 55/2 East Main Street, Whitburn, EH47 0RF (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 55/2 East Main Street, Whitburn, EH47 0RF under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is

based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 17 October 2022, a Notice to Leave dated 30 May 2024, an acknowledgement signed and dated 30 May 2024 by the Respondent, emails between Brown and Company Properties and the Applicant and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to West Lothian Council dated 5 September 2024.
3. On 22 February 2025 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 14 April 2025. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 25 February 2025 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 14 April 2025 by way of teleconference. Mrs Kempik appeared on her own behalf. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
5. The Tribunal had before it the Private Residential Tenancy Agreement dated 17 October 2022, the Notice to Leave dated 30 May 2024, the acknowledgement signed and dated 30 May 2024 by the Respondent, emails between Brown and Company Properties and the Applicant and the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with the email to West Lothian Council dated 5 September 2024. The Tribunal noted the terms of these documents.
6. The Applicant advised she was looking for the Tribunal to grant an order for eviction as she wanted to sell the Property to fund her retirement. She explained she had served the Notice to Leave on the Respondent by hand as she knew him well and wanted to explain why she was serving the Notice. She explained to him that he would hear from the Council in due course regarding the action she was taking. She thought she had heard from the Respondent's daughter that the Respondent had heard from the Council. Her son's partner was the Respondent's daughter. She had not spoken to the Respondent recently. She understood he was looking for somewhere else to stay but rental prices were high and there was a lot of competition for rental properties.

7. Mrs Kempik further explained she had bought 4 properties about 18 years ago to fund her retirement. Her plan had been to sell the properties when she was 60 years of age. She was now 62 years of age. On being questioned by the Tribunal she advised that the Respondent lived on his own. She also advised she estimated the Respondent's age to be in his early – mid 50s. She was not aware that he had any health issues or was vulnerable in any way. She explained she had sold two of her other properties and one was in the course of being sold. The Property was the last property that she had to sell.

Reasons for Decision

8. The Tribunal considered the issues set out in the application together with the documents lodged in support.
9. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict
10. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
11. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 23 August 2024. The Notice to Leave was served on the Respondent personally on 30 May 2024. The Respondent had acknowledged service. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 23 August 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
12. The Tribunal considered the submissions made by the Applicant. The Tribunal was satisfied on the basis of the documents lodged, together with the Applicant's submissions that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to

sell the Property as soon as she regained possession. The application was not disputed.

13. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it to fund her retirement. The Tribunal gave weight to the fact that the Respondent did not oppose the application. The Tribunal were conscious that the Respondent may be finding it difficult to find affordable, alternative accommodation. However, the Tribunal considers the deciding factor to be that the Applicant exercises a right of property, which gives her the right to sell the Property. The Tribunal is of the opinion that that right must take precedence. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

14. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

15. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

14 April 2025

Legal Chair

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Date