



**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/24/4902**

**Re: Property at 30 Croall Street, Kelty, Fife, KY4 0DX ("the Property")**

**Parties:**

**Owen McMahon, 14 Market Street, Stirling, FK8 1TU ("the Applicant")**

**Dale Seath, 30 Croall Street, Kelty, Fife, KY4 0DX ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)**

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

At the Case Management Discussion ("CMD") which took place by telephone conference on 12 May 2025 the Applicant was not in attendance but was represented by Ms Wooley of Bannatyne, Kirkwood, France & Co, 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.

**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 5 June 2021.
- iii. On 15 July 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 9 October 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 Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **The CMD**

In response to questions from the Tribunal Ms Wooley made the following oral representations:-

- i. The Applicant is selling the Property to release capital.
- ii. The Property was purchased by the Applicant as his pension.
- iii. The Applicant is a painter and decorator. Work is drying up and his income has lowered.
- iv. There is a mortgage over the Property. The balance of the mortgage is around £51,000 and the value of the Property is around £81,000.
- v. The mortgage payments and costs (being Landlord registration fees and repairs) associated with the Property are no longer covered by the rent.
- vi. The Applicant has no other rental properties.
- vii. The Property was purchased in May 2021.
- viii. The rent was increased to £515 per calendar month in January 2024.
- ix. Due to Government restrictions it was not possible to increase the rent to ameliorate the mortgage increase.
- x. Rather than increasing the rent further the Applicant decided to sell the Property.
- xi. The Respondent is self-employed.
- xii. There are no rent arrears.
- xiii. The Respondent has a child that stays with him part-time.
- xiv. He has no partner.
- xv. The last contact with the Respondent was in February 2025 regarding an inspection of the Property. He has not been in touch with the Letting Agent or the Applicant about removing.
- xvi. There have been no communications from the local authority regarding any housing application by the Respondent.
- xvii. There have been no requests for references.
- xviii. The Respondent has no known disability or health condition.
- xix. The Respondent has had an extended period of time to find alternative accommodation.
- xx. The Applicant seeks an eviction order.

### **Findings in Fact**

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The parties entered into the PRT relative to the Property that commenced on 5 June 2021.
- iii. On 15 July 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 9 October 2024 on the basis of Ground 1 of Schedule 3 of the 2016 Act.
- iv. The Applicant has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The Applicant is selling the Property to release capital.
- vi. The Property was purchased by the Applicant as his pension.
- vii. The Applicant is a painter and decorator.
- viii. The Applicant's work is drying up and his income has lowered.
- ix. There is a mortgage over the Property. The balance of the mortgage is around £51,000 and the value of the Property is around £81,000.

- x. The mortgage payments and costs (being Landlord registration fees and repairs) associated with the Property are no longer covered by the rent.
- xi. The Applicant has no other rental properties.
- xii. The Property was purchased in May 2021.
- xiii. The rent was increased to £515 per calendar month in January 2024.
- xiv. The Respondent is self-employed.
- xv. There are no rent arrears.
- xvi. The Respondent has a child that stays with him part-time.
- xvii. The Respondent has no partner.
- xviii. The Respondent has not been in touch with the Letting Agent or the Applicant about removing.
- xix. There have been no communications from the local authority regarding any housing application by the Respondent.
- xx. There have been no requests for references.
- xxi. The Respondent has no known disability or health condition.

### **Reasons for decision**

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally by Ms Wooley at the CMD was not challenged and was accepted by the Tribunal.

The application proceeds upon Grounds 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 from Your Move dated 9 July 2024 which states that the Applicant has instructed Your Move to sell the Property. 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 purchased the Property as his "pension".
- ii. The lease of the Property is no longer commercially viable due to the increased rent still not covering the mortgage and costs due.
- iii. The Applicant's income is reduced due to a shortage of work.
- iv. The Applicant wishes to release the capital in the Property.
- v. To compel the Applicant to retain the Property and the PRT to the Respondent would cause him financial difficulties.

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.

### **Decision**

The Tribunal granted an eviction order against the Respondent in favour of the Applicant in terms of Ground 1 of the 2016 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.**

Gillian Buchanan

20 May 2025  
Date