



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/4834

Re: 4C Millburn Road, Renfrew, PA4 8UN ('the Property')

Parties:

Alan Orr residing at 8 Brackenhirst Gardens, Glenmavis, Airdrie, ML6 0PB ('the Applicant')

Kayleigh Payne, Penny Lane Homes ('The Applicant's Representatives')

Florin Cirpaci and Mrs Printesa Florentina Adelina Stana residing at 4C Millburn Road, Renfrew, PA4 8UN ('the Respondents')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) Sandra Brydon (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 18th October 2024. The application states that the ground for eviction was as follows:
'The Landlord intends to selling the let Property.'

1.3 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement between the parties dated 4th September 2020.

- Notice to Leave dated 17th June 2024 advising the Tenants that an application will not be submitted to the Tribunal for an eviction before 12th September 2024 and the eviction ground is that the Landlord intends to sell the Property due to financial difficulties.
- Email from the Landlord to the Tenants dated 17th June 2024 sending them the Notice to Leave.
- Email to Renfrewshire Council dated 18th October 2024 attaching the Section 11 Notice.
- Section 11 Notice addressed to Renfrewshire Council.
- Mandate by the Applicant authorising his Representative to act for him.
- Client Fee Agreement between the Landlord and Penny Lane Homes Renfrew Limited dated 9th and 18th October 2024 in connection with the proposed sale of the Property and authorising the Landlord's solicitor to pay £900 to Penny Lane Homes on legal completion of the sale of the Property.
- A mortgage redemption statement from Hessonite Mortgages dated 27th January 2025.
- A letter from Penny Homes to the Tribunal dated 9th April 2025 which explains that the reason the Landlord wishes to sell the Property is he had a fixed term mortgage with Northern Rock. Northern Rock sold their stock to Hessonite Mortgages who are demanding repayment of the mortgage in the region of £73,000. Hessonite have been in touch monthly and are aware of the Landlord's position. The Property 4C Millburn Road is the Landlord's only rental property and the owner is of an age where he is not able to get a new mortgage and needs to sell off the Property to repay the Hessonite mortgage.

2. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 18th November 2024, she intimated that he had decided to refer the application (which application paperwork comprises documents received on 18th October 2024) to a Tribunal.

3. The Respondents did not provide any written representations.

4. Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 10.00 on 30th April 2025.

The Applicant's representative and the Applicant attended the CMD.

The Respondents did not attend and were not represented.

The Respondents had been served with a letter advising them of the CMD by Julie Weir, Sheriff Officer on 25th February 2025. The clerk telephoned the Respondents at 10.05am on 30th April 2025 and spoke to Mrs Stana who advised that she was not able to join the CMD, she did not ask for the CMD to be postponed. The Applicant's Representative advised that Penny Lane Homes had carried out an inspection of the Property recently and Mr Cirpaci had confirmed that he was aware of the CMD. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.1 Oral Representations by the Applicant's Representative:

- 4.1.1 Mr Orr needs to sell the Property to repay the outstanding mortgage.
- 4.1.2 Mr Orr is 63 years of age and retired. He is unlikely to get another mortgage.
- 4.1.3 The estimated value of 4C Millburn Road, Renfrew is £95/100,000.
- 4.1.4 Mr Cirpaci is in full time employment. The tenants have three children. She believes that two of the children are of school age and that Mrs Stana stays at home and looks after the youngest child.
- 4.1.5 The tenants have applied to the Local Authority and a Housing Association for rehousing.
- 4.1.6 The rent account is not in arrears.
- 4.1.7 There are a number of repairs required to the Property as a result of the tenants' occupation of the Property.
- 4.1.8 The Property 4C Millburn Road, Renfrew is a three bedroom Property.

4.2 Oral Representations by the Applicant:

- 4.2.1 He advised that the rent payments cover the monthly mortgage payments.
- 4.2.2 The mortgage account is not in arrears.
- 4.2.3 The outstanding mortgage is approximately £73,000.
- 4.2.4 The mortgage company require the mortgage to be redeemed. They had given him a deadline of 28th February 2025. They ask for regular updates regarding the eviction application.
- 4.2.5 He has found this to be particularly stressful and has passed the negotiations with the mortgage company to his solicitor.
- 4.2.6 He owns the Property he resides in outright.
- 4.2.7 He is retired. When he was employed he was involved in the financial services industry. He is not earning enough now to arrange remortgage of 4C Millburn Road, Renfrew. Hessonite will not consider a remortgage. Now that the fixed rate mortgage with Hessonite has ended they require the mortgage to be repaid.

5. Decision

5.1 Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal determined that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal determined that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The Client Fee Agreement produced was sufficient in its terms.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 17th June 2024 and advised the Tenants that an application would not be submitted to the Tribunal for an eviction order before 12th September 2024.

The commencement date of the lease was 3rd September 2020. The Tenants had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Notice to Leave had been served on the Tenants by email on 17th June 2024. Section 1 of the tenancy agreement acknowledged that notices will be served using the parties email addresses set out in the tenancy agreement. The Notice to Leave correctly gave the Tenants a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal determined that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

5.2 The Tribunal determined that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.2.1 The Tribunal had a copy of the Landlord's title REN114163 and established that the Applicant is heritable proprietor of the Property and he is entitled to sell the Property.

5.2.2 Evidence had been provided that the Applicant intend to sell the Property. The Tribunal accepted the following evidence:

5.2.2.1 The oral submissions by Mr Orr that he needs to sell the Property to enable him to repay the mortgage.

5.2.2.2 The Client Fee Agreement between Mr Orr and Penny Lane Homes in connection with the proposed sale of the Property.

5.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once he obtains vacant possession.

5.4 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right

to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicant needs to sell the Property to redeem the outstanding mortgage and the fact the Respondents have applied for alternative housing and they have not lodged any written representations opposing the eviction application.

5.4 The Tribunal granted the eviction.

6. 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.

J Taylor

Legal Member

30th April 2025