

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/4600

Re: Property at 22 Craig Gardens, Cults, Aberdeen, AB15 9TN (“the Property”)

Parties:

Mrs Marina Tawse, The Firs, Methlick, Ellon, AB41 7HN (“the Applicant”)

Mr Joe Chiedu Ochei and Mrs Pearl Ochei, 22 Craig Gardens, Cults, Aberdeen, AB15 9TN (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 22 Craig Gardens, Cults, Aberdeen, AB15 9TN 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 Respondents. The order will include a power to Officers of Court to eject the Respondents 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 her 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 28 October 2019, Notices to Leave to each of the Respondents dated 4 July 2024 with signed Recorded Delivery receipt dated 5 July 2024, a quote for the sale of the Property from Aberdeen Considine Solicitors, a statement from the Applicant and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to Aberdeen City Council dated 2 October 2024.
3. On 15 March 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 5 June 2025. This paperwork was served on the Respondents by James Booth, Sheriff Officer, Aberdeen on 19 March 2025 and the Executions of Service were received by the Tribunal administration.
4. On 4 April 2025 the Respondents lodged written representations.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 5 June 2025 by way of teleconference. Mr O'Donnell from Messrs Aberdeen Considine, Solicitors appeared for the Applicant. Mr Ochei appeared on behalf of the Respondents.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 28 October 2019, the Notices to Leave to each of the Respondents dated 4 July 2024 with signed Recorded Delivery receipt dated 5 July 2024, the quote for the sale of the Property from Aberdeen Considine Solicitors, the statement from the Applicant, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to Aberdeen City Council dated 2 October 2024 and the email from the Respondents dated 4 April 2025. The Tribunal noted the terms of these documents.
7. The Tribunal asked Mr Ochei to confirm whether the Respondents did not oppose the application as set out in their email of 4 April. Mr Ochei confirmed they did not oppose the application to evict. Over the last month or so they had viewed 20 or more properties. They had registered with all the local letting agencies so they could get priority notification of any new properties. They had two children aged 9 and 10 and needed the extra time to the end of the summer to find suitable unfurnished accommodation for the family.
8. Mr O'Donnell advised he was looking for the Tribunal to grant an order for eviction as the Applicant wanted to sell the Property. After seeing the Respondents' email of 4 April 2025 and in the event that the Tribunal were minded to grant the order, his client was content to give the Respondents more time. The intention is to get the Property on the market with the long stop date of the end of September. His client had obtained a sales quote which was lodged with the Tribunal. He referred the Tribunal to her statement which showed her intention was to sell the Property.

9. Mr O'Donnell referred the Tribunal to his written submissions on the Notice to Leave following upon a query during the sifting process. The Tribunal confirmed it accepted those submissions.

Reasons for Decision

10. The Tribunal considered the issues set out in the application together with the documents lodged in support.
11. 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
12. 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.
13. 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 28 September 2024.
14. The Tribunal accepted Mr O'Donnell's written submission that with reference to Section 26(5) of the Interpretation and Legislative Reform (Scotland) Act 2010 that a document is deemed to be received 48 hours after being sent unless the contrary can be shown. In this case the Notice to Leave was received by the Respondents on 5 July 2024 as evidenced by the Recorded Delivery receipt. The relevant period began on 5 July 2024 as being the day the Respondents received the Notice to Leave. 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 28 September 2024. In the circumstances the Tribunal is satisfied the Respondents have been given sufficient notice following the reasoning in the case of *Smith v McDonald 2021 Hous. L.R 76*. Further the Tribunal accepted Mr O'Donnell's written submission that following the application of the statutory provisions in *Holleran v McAllister EV/18/3231 at paragraphs 16-19* the notice period expired on 27 September 2024. Accordingly, the Notice to Leave complies with Section 62 (1).
15. The Tribunal considered the submissions made on behalf of both parties. The Tribunal was satisfied on the basis of the documents lodged, together with

parties' 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 in the hope she could market it by the end of September. The application was not disputed and the Respondents were taking steps to find alternative accommodation

16. 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. On the other hand the Tribunal gave weight to the fact that the Respondents did not oppose the application. The Tribunal were conscious that the Respondents were finding it difficult to find alternative accommodation for their family and that they needed further time to do so. However, all things considered, the Tribunal considered the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order. Due to the difficulties the Respondents are facing in finding suitable alternative accommodation, the Tribunal determined the order should be suspended until 29 August 2025.

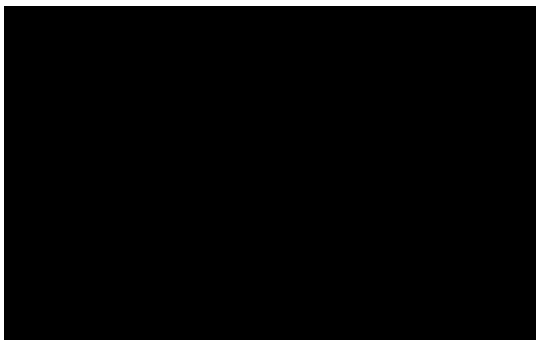
17. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

18. The Tribunal granted an order for repossession suspended until 29 August 2025. 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.



5 June 2025

Date