



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/25/0382

Re: Property at 1 Smithy Cottages, Duncow, Dumfries, DG1 1TA (“the Property”)

Parties:

Mrs Joan Stroud, Craigmore, 26 Georgetown Crescent, Dumfries, DG1 4EQ (“the Applicant”)

Mr Alan Lang and Mrs Appolina Lang, 1 Smithy Cottages, Duncow, Dumfries, DG1 1TA (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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 1 Smithy Cottages, Duncow, Dumfries, DG1 1TA 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 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 February 2019 between Dennis Stroud and the Respondents, Notices to Leave dated 31 October 2024 with signed Recorded Delivery receipts dated 1 November 2024, an EICR, letters regarding the sale of the Property from Primrose and Gordon Solicitors dated 31 October 2024 and Notices in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with emails to Dumfries and Galloway Council dated 31 January 2025.
3. On 11 June 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 4 August 2025. This paperwork was served on the Respondents by Dale G Barrett, Sheriff Officer, Edinburgh on 19 June 2025 and the Executions of Service were received by the Tribunal administration.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 4 August 2025 by way of teleconference. Mrs Wilson from Primrose and Gordon Solicitors appeared for the Applicant. Mr Lang appeared on his own behalf and on behalf of his wife Mrs Lang.
5. The Tribunal had before it the Private Residential Tenancy Agreement dated 28 February 2019 between Dennis Stroud and the Respondents, the Notices to Leave dated 31 October 2024 with signed Recorded Delivery receipts dated 1 November 2024, the EICR, letters regarding the sale of the Property from Primrose and Gordon Solicitors dated 31 October 2024 and Notices in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with emails to Dumfries and Galloway Council dated 31 January 2025. The Tribunal noted the terms of these documents.
6. Mrs Wilson advised the Applicant wished to sell the Property. Since the application had been lodged, they had also raised another eviction action and an arrears action as the Respondents were now in arrears. The Tribunal explained these were not matters which were before the Tribunal. Mrs Wilson went on to submit the Respondent had inherited the tenancy after her husband Dennis Stroud had passed away. The Applicant was 79 years of age and suffered from a number of health conditions including metastatic breast cancer, osteoarthritis, hypertension and anaemia. The Property had an interest only mortgage of £75 000 and she had to pay that off. Mrs Wilson submitted that was relevant where the Applicant was not receiving any rent, A previous eviction application in September 2023 had been refused on the

basis the Notice to Leave was invalid. In her submission the Respondents had known for two years that the Applicant wished to sell the Property. The Applicant had no longer been able to remain in the family home which she sold and now lives in a bungalow which best suits her needs. However she may be liable for Additional Dwelling Supplement when the Property is sold but hopes to get a refund on any tax payable. In her submission, it was reasonable to evict.

7. In response Mr Lang explained that he understood why the Applicant was bringing the current application. He had known the Applicant and her husband for a long time. He had cared for the Applicant and her husband, who was blind when he was alive. After her husband's death the Applicant decided she wanted to sell the Property. Mr and Mrs Lang had tried to buy the Property but unfortunately that did not work out. After the previous application to evict had been refused by the Tribunal they had again tried to buy the Property, but the Applicant had decided she wanted to put it on the open market.
8. He explained he was not opposed to the application to evict. However, he submitted that he wished some additional time to move out of the Property. He had agreed to buy a friend's house but in order to satisfy the bank of his income he had to show three months' wage slips. He was currently unemployed. His new job did not start until September. When questioned by the Tribunal as to when he thought he would be in a position to proceed to purchase that property he explained that he anticipated that they would be in a position to purchase it in December. He hoped also to be able to pay off the rent arrears. On further questioning from the Tribunal, he confirmed there were no children in the household, His wife had Aspergers syndrome. He also advised he was on Universal Credit. They had lived in the Property for about six and a half years and was aware of the Applicant's financial position. He advised that he had nowhere else to stay as both his parents and his wife's parents were deceased, He also advised that he had not taken any advice from the local Council but accepted he could do so.

Reasons for Decision

9. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal considered the submissions made by Mrs Wilson and Mr Lang
10. 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.
11. 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.

12. 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 29 January 2025. In this case the Notice to Leave was received by the Respondents on 1 November 2024 as evidenced by the Recorded Delivery receipt. In terms of Section 54 the notice period of the Notice to Leave is 84 days. In the circumstances the Tribunal is satisfied the Respondent have been given sufficient notice. Accordingly, the Notice to Leaves served on the Respondents comply with Section 62 (1).
13. 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. The application was not disputed. However, Ground 1 is a discretionary ground of eviction. The Tribunal also has to be satisfied that it is reasonable to evict.
14. 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. She was elderly and suffered from a number of serious health conditions. The Tribunal gave considerable weight to those facts. On the other hand, the Tribunal gave weight to the fact that the Respondent did not oppose the application but was seeking further time to move out as he was planning to buy a friend's house. The Tribunal were conscious that the Respondent was about to start a new job and gave some weight to the fact that he had to produce salary receipts to finalise the offer of a mortgage. However, the Respondents had known for some time that the Applicant needed to sell the Property and her right to do so was paramount. 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.
15. 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

16. 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

4 August 2025

Legal Member

Date