



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/22/1848**

**Property at 23 Atholl Way, Livingston, EH54 8TH (“the Property”)**

**Parties:**

**Miss Charmaine Sutherland, 44 Buckstone Road, Edinburgh, EH10 6UE (“the Applicant”)**

**Mr Mihai Luca, Mrs Ancuta-Maria Luca, 23 Atholl Way, Livingston, EH54 8TH (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.**

**Background**

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, Home Report dated 9 February 2022 and Memorandum of sale stating that a sale of the property was agreed on 27 March 2022. The application is based on ground 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 29 July 2022. Both parties were notified that

a case management discussion (“CMD”) would take place by telephone conference call on 13 September 2022, and they were required to participate. On 16 August 2022 the Respondents lodged a letter from a Martin Baka stating that he was not able to move out of his home until 27 September 2022, as construction work was delayed. There is a handwritten note on the letter which states “Martin is the tenant whose property we are moving into September 27, 2022.” Separately on a form provided by the Tribunal in relation to “Accessibility requirements” the Respondents indicate that they have found alternative accommodation and intend to move into it on 27 September 2022.

3. The CMD took place on 13 September 2022 by telephone conference call. The Applicant participated. The Respondents did not participate.

### **Case Management Discussion**

4. Ms Sutherland advised the Tribunal that the Respondents have been the tenants of the property since March 2018. Although this was not lodged with the application, they signed a Scottish Government model tenancy agreement with a monthly rent of £625. Ms Sutherland said that she has had no contact with the Respondents since 15 August, when they provided her with a copy of the letter from Martin Baka.
5. The Tribunal noted that a Notice to leave has been submitted in relation to ground 1 of schedule 3. Ms Sutherland advised the Tribunal that she told the Respondents in September 2021 that she was going to sell the flat. On 16 November 2021, she went to the property to deal with a problem with the washing machine. She took the Notice to Leave and handed it to Mr Luca. Mrs Luca was present. She subsequently sent a further copy of the notice to them by email.
6. Ms Sutherland told the Tribunal that she still owns the property. She cannot complete the purchase which was agreed in March 2022, until the tenants move out. She is in regular contact with her solicitor. The purchasers have asked for regular updates and still intend to proceed with the purchase. However, if the tenants do not move out soon, she is concerned that the purchaser may pull out and she will require to market it again for sale. She intends to sell the property either way.
7. Ms Sutherland advised the Tribunal that the property is a two-bedroom flat. The Respondents reside there with a child of six years old. To her knowledge, both are in employment, and she is not aware of any health issues or disabilities affecting any member of the household. The Respondents have been good tenants. Only one rental payment has been missed, in May 2022. This was because the notice period had expired, and they were supposed to be moving out. They have agreed that the deposit paid can be used to cover this when the tenancy ends. Although she has been notified by the Respondents that they have secured alternative accommodation, she is concerned about the delay

and has not been asked for a reference by a new landlord.

8. In response to questions from the Tribunal, Ms Sutherland said that she had taken the decision to sell the flat due to financial difficulties. She was made redundant during the pandemic and was unemployed for a while. She is working again but her salary has reduced. She was staying with a partner, but the relationship broke down. She needs to sell the flat to pay off her debts and provide herself with the resources to obtain her own accommodation. She has no dependants.

## **Findings in Fact**

9. The Applicant is the owner and landlord of the property.
10. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
11. The Applicant is entitled to sell the property.
12. The Applicant intends to sell the property.
13. The Respondents have stated that they have secured alternative accommodation and intend to move into it on 27 September 2022.

## **Reasons for Decision**

14. The tenancy started in March 2018. The application to the Tribunal was submitted with a Notice to Leave dated 16 November 2021. In a paper apart lodged with the application, and during the CMD, the Tribunal was told that the Notice was handed personally to the Respondents by the Applicant on 16 November 2022, at the property. The Notice states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 17 May 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
15. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 1 of Schedule 3 (as amended by the Coronavirus (Scotland) Act 2020) 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 ”

16. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell same. The Tribunal is also satisfied, from the documents submitted with the application and the information provided at the CMD, that the Applicant has reached an agreement with a purchaser to sell the property for the price of £139,599. The property was valued in February 2022 at £130,000. If this sale does not proceed because of the delay in the property becoming vacant, the Tribunal is satisfied that the Applicant intends to re-market it for sale immediately. The Tribunal therefore concludes that the eviction ground has been established.
17. The Tribunal notes that the Applicant decided to market the property for sale when she experienced financial problems following redundancy and a relationship breakdown. She requires to sell the property to pay off debts and to provide herself with sufficient resources to obtain accommodation.
18. The Respondents did not participate in the CMD. The only information provided by them is a statement that they will be moving to new accommodation on 27 September 2022. The only other information available to the Tribunal regarding the Respondents' circumstances was provided by the Applicant. She was able to confirm that the Respondents reside at the property with a 6 year old child. Both are understood to be in employment and have paid their rent throughout the tenancy, except for the month of May 2022 when they were due to move out. The Tribunal also notes that the Respondents were notified informally of the plan for the property in September 2021, before being issued with a Notice to leave in November 2021. They have therefore had almost a year to find alternative accommodation. According to their submissions, they have now done so.
19. Having regard to the information available about both parties, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
20. The Tribunal therefore concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

## **Decision**

21. The Tribunal determines that an eviction order should be granted against the Respondents.

## **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.**

**Josephine Bonnar, Legal Member**

**13 September 2022**