



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016 (Act)**

Chamber Ref: FTS/HPC/EV/21/0583

**Re: Property at The Shaw House, Boreland, Lockerbie, DG11 2LG (“the
Property”)**

Parties:

**Mr John Elliot, Barton Lodge, Steeple Aston, Bicester Oxfordshire, OX25 5QH
 (“the Applicant”)**

**Ms Chelle Oldham, The Shaw House, Boreland, Lockerbie, DG11 2LG (“the
Respondent”)**

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for eviction and recovery of
possession be granted but that execution of the order should be postponed to
27 August 2021.**

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to live in the Property and for eviction and recovery of possession on Ground 1 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 12 March 2021;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 7 November 2019;
3. Notice to Leave dated 24 August 2020 and served by post;
4. Section 11 Notice to Local Authority;

5. Email dated 15 March 2021 to Local Authority serving Section 11 Notice;
6. Email from Savills confirming instruction to market and sell the Property;
7. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 21 April 2021;
8. Written Submissions from Respondent's representatives dated 10 May 2021;
9. Email from Dumfries and Galloway Council dated 10 May 2021.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 20 May 2021. The Applicant did not participate but was represented by his letting agent. The Respondent participated and was represented by Dumfries and Galloway CAB.

The Respondent did not seek to oppose the order for recovery of possession but due to her personal circumstances, health issues and young family was seeking postponement of the time for execution of any order to enable her to obtain alternate accommodation. She had made considerable effort in searching for properties cross the UK and was in regular contact with Dumfries and Galloway Homelessness Unit. Due to her personal circumstances sourcing suitable alternate accommodation was proving difficult and she sought further time. She was prepared to co-operate with the Applicant if he placed the Property on the market whilst she remained in it.

The Applicant opposed any postponement as due to his personal financial circumstances he required to sell the Property to settle financial commitments he had and which were due to come to fruition in April 2022. The Applicant had the benefit of the extended 6 month notice period introduced as a consequence of the pandemic. He wished to have the Property on the market with vacant possession by the summer. The summer was the best time to market such Property. He wished to have vacant possession to undertake any necessary works and prepare the Property to go on the market. He thought it would not be practicable or desirable to have the Property on the market without vacant possession.

Having heard from the Parties the Tribunal had regard to the terms of Ground 1:

Landlord intends to sell

1(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 Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 7 November 2019;
2. The Applicant is the owner of the Property and intends to sell it or at least put it up for sale within 3 months of the Respondent ceasing to occupy it;
3. Notice to Leave had been served on the Respondent by post;
4. The Applicant has engaged Savills to market and sell the Property;
5. Section 11 notification had been served on the local authority on 15 March 2021;
6. The Respondent does not oppose the order for recovery of possession;
7. The Respondent suffers from ill health, has 3 young children and a live-in carer;
8. The Respondent has made numerous attempts to source alternate accommodation but has been unsuccessful;
9. The Respondent has been in regular contact with Dumfries and Galloway Homelessness Unit;
10. The Applicant has financial commitments that necessitate the sale of the Property;
11. The Applicant's preference is to market and sell the Property with vacant possession;
12. The Applicant needs access and vacant possession of the Property to prepare it for sale.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order but to postpone execution of the order to 27 August 2021 under Rule 16A of the Tribunal Procedure Rules. This would allow the Respondent further time to source alternate accommodation and still give the Applicant time to market and sell the Property and to address his financial commitments.

The Tribunal was satisfied that Ground 1 had been established and accordingly granted the application for eviction and recovery of possession but postponed execution of the order to 27 August 2021.

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.

A. Strain

20 May 2021

Legal Member/Chair

Date