



**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/21/0246

Re: Property at 54 Roseberry Place, Hamilton, ML3 9EP (“the Property”)

Parties:

Mr Sandor Dogei, 148 Torbrex Road, Cumbernauld, G67 2JS (“the Applicant”)

Mr Graham Ditchburn, 54 Roseberry Place, Hamilton, ML3 9EP (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Elizabeth Williams (Ordinary Member)**

Decision (in absence of the Respondent)

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

Background

1. By application dated 29 January 2021, 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 copy private residential tenancy agreement, Notice to Leave with copy email, rent statement, notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a Home Report dated 6 July 2020. The application is based on grounds 1 and 12 of schedule 3 of the 2016 Act, landlord intends to sell the let property and rent arrears over three consecutive months.

2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 8 March 2021. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case conference on 12 April 2021 at 2pm and they were required to participate.
3. The CMD took place on 12 April 2021 at 2pm by telephone conference call. The Applicant participated. The Respondent did not participate.

Case Management Discussion

4. The Tribunal noted that a Notice to leave has been submitted in relation to ground 1 of schedule 3, but not ground 12. Mr Dogei advised that when the notice was served, he had reached an arrangement with the Respondent regarding repayment of the rent arrears. As a result, he had decided to base the notice on ground 1 only. However, the Respondent had not adhered to the payment arrangement, so he had submitted the application to the Tribunal on both grounds. The Tribunal noted that section 52(3) of the 2016 Act requires an application to be accompanied by a notice to leave. The application in relation to ground 12 was not accompanied by a corresponding notice to leave and as such the Tribunal is unable to entertain the application on this ground. Mr Dogie confirmed that he was happy to proceed on ground 1 alone.
5. Mr Dogei advised the Tribunal that there has been no recent contact with the Respondent but believes that he is still in occupation of the property. He stated that he decided to sell the property in the summer of 2020 because the Respondent was not paying his rent, and this had caused him financial problems. He has struggled to make the mortgage repayments on the property. He is now in debt and wants to sell the property to repay the debt. He instructed a home report in July 2020 and placed the property on the market for sale. At that stage, he intended to sell it with the Respondent as a sitting tenant. There was some interest in the property, but all prospective buyers asked to see the rent statement and were not prepared to purchase the property when they were made aware of the extensive rent arrears. On the advice of his letting/estate agent, Mr Dogie took the property off the market. His intention is to instruct the agent to market the property for sale when the Respondent has moved out. His home report has expired so a new one is required. He has tried to arrange this already, but the Respondent did not provide access for the surveyor, although he was at home. He also expects that some re-decoration may be required before the property can be placed on the market.
6. Mr Dogei advised the Tribunal that he has made numerous attempts to get the Respondent to pay his rent and the arrears. Very few payments have been made, and none since July 2020. As a result, he cannot afford to keep the property and wants to sell it as soon as he is able. In response to questions from the Tribunal, he advised that the Respondent has offered different and sometimes conflicting explanations for non payment. He initially indicated that he had been too busy at work and kept forgetting to pay. He later indicated that

his earnings had been affected by the pandemic but in January/February 2021 he said that he expected to be doing extra hours which should allow him to pay his rent and make payments to the arrears. No payments have been received. At no point have any payments been received from Universal Credit and Mr Dogei does not know whether he has claimed or been in receipt of benefits at any stage. He resides at the property alone.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The Applicant is entitled to sell the property.
10. The Applicant intends to sell the property.

Reasons for Decision

11. The tenancy started on 24 January 2020. The application to the Tribunal was submitted with a Notice to Leave dated 21 July 2020. The Applicant also submitted a copy of an email from TC Young, solicitors, dated 21 July 2020, addressed to the email address of the Respondent specified in the tenancy agreement. The Notice to Leave is attached to the email. 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 24 January 2021. The application to the Tribunal was made after expiry of the notice period. The Legal Member 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 Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
12. 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 "
13. 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 intends to put the property on the market for sale when he has recovered possession of same. The Tribunal therefore concludes that the eviction ground has been established.

14. The Tribunal notes that the Applicant decided to market the property for sale when he experienced financial problems because of the Respondent's failure to pay rent. He obtained a home report and attempted to sell the property with the Respondent in occupation. However, he was unsuccessful in doing so as prospective purchasers were put off by the level of rent arrears. The Tribunal is satisfied that the Applicant has made significant efforts to get the Respondent to pay rent and address the arrears. However, no payments have been made since July 2020 and the Applicant requires to sell the property to pay off the debts he has incurred through having to pay the mortgage and other costs for the property, with no rental income coming in.
15. The Respondent did not participate in the CMD and did not lodge any written representations in advance of it taking place. The only information available to the Tribunal regarding the Respondent's circumstances has been provided by the Applicant. He indicated that the Respondent lives at the property alone and is understood to be in employment.
16. On the basis of the information provided by the Applicant at the CMD, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
17. 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

18. 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.

