



**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/22/3183**

**Re: Property at 21 Moray St, Lossiemouth, Moray, IV31 6HZ (“the Property”)**

**Parties:**

**Ms Jane Pickersgill, Aria, Mere Rd, Waddington, Lincolnshire, LN5 9NX (“the Applicant”)**

**Ms Caroline Banbury, 21 Moray St, Lossiemouth, Moray, IV31 6HZ (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**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. 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 Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, a statement from the Applicant regarding her reasons for selling the property and documentation from McEwan Fraser Legal regarding the marketing and sale of the property. 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. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference**

call on 14 December 2022, and they were required to participate. On 4 December 2022 the Respondent lodged written representations.

3. The CMD took place on 14 December 2022 at 2pm. The Applicant and Respondent both participated.

### **Case Management Discussion**

4. The Respondent told the Tribunal that she has an appointment to view a Council property on Friday and expects to sign her tenancy agreement and collect her keys on the same day. She said that she has decided that she will definitely accept the property because of its location. However, there are no carpets or white goods in the property, and she does not expect it to be habitable until the end of January. The Respondent confirmed that she does not oppose the eviction order but needs to be able to stay in the property until the end of January.
5. The Applicant told the Tribunal that the delay in recovering possession of the property had caused distress to both the Respondent and her daughter. It has also delayed the start of IVF treatment which she can ill afford due to her age.

### **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Applicant is entitled to sell the property.
9. The Applicant intends to market the property for sale when it becomes vacant.
10. The Applicant requires to sell the property to provide funds for IVF treatment and to supplement her income so that she can work part time.
11. The Respondent has been offered accommodation by the Local Authority and expects to collect the keys on Friday 16 December 2022. She will require to purchase carpets and white goods before she can live in the property.

### **Reasons for Decision**

12. The tenancy started on 1 October 2018. The application to the Tribunal was submitted with a Notice to Leave dated 26 February 2022 together with an email

to the Respondent enclosing the Notice to leave, also dated 26 February 2022. Clause 4 of the tenancy agreement stipulates that correspondence, including formal notices, are to be sent by email. The Notice was sent to the Respondent using the email address specified in the tenancy agreement.

13. The Notice to leave 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 1 September 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.
14. 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 section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022) 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 "
15. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell same. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicant intends to market the property for sale when it becomes vacant. She has instructed McEwan Fraser Legal to market the property on her behalf.
16. The Tribunal noted that the Applicant decided to sell the property as she requires the proceeds of the sale to pay for IVF treatment and to supplement her income as she intends to reduce the number of days that she works so that she can spend more time with her child.
17. The Tribunal also noted that the Respondent does not oppose the application as she has been offered suitable alternative accommodation by the Council and expects to collect the keys within a few days. As she will have to purchase carpets and white goods for the property, she may not be able to move into the property until the end of January 2023.
18. Having regard to the information provided by both parties, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
19. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would

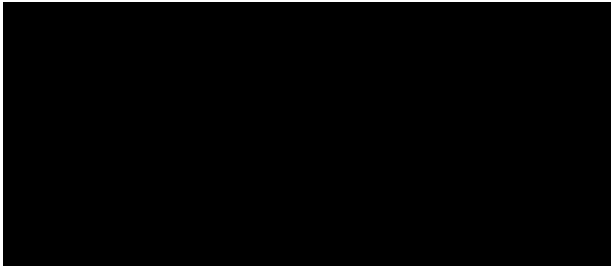
be reasonable to grant the eviction order. The Tribunal is also satisfied that a short delay in execution of the order should be granted in terms of Rule 16A(d) of the Procedure Rules. The order is not to be executed until 1 February 2023

## **Decision**

**20.** The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**



**14 December 2022**