



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/22/1274

**Re: Property at 21 Camp Rigg, Livingston, West Lothian, EH54 8PD (“the
Property”)**

Parties:

**Mrs Wendy White, Mr David White, 13 Duncan Green, Livingston, West Lothian,
EH54 8PR (“the Applicant”)**

**Mr Gavin Kirton-Vaughan, Ms Nicola Kirton-Vaughan, 21 Camp Rigg,
Livingston, West Lothian, EH54 8PD (“the Respondent”)**

Tribunal Members:

Alison Kelly (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 the order for eviction should be granted.**

On 3rd May 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement with a commencement date of 30th August 2019 showing the rent as £695 per month;
2. Copy Notice to Leave dated 29th October 2021 to leave by 1st May 2022;
3. Email dated 28th October 2021 by way of proof of service;
4. Section 11 Notice;

5. Copy of a letter of engagement from DM Hall regarding instruction of a Home Report dated 17th November 2021.

The Application was served on the Respondent by Sheriff Officers on 4th August 2022.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicants represented themselves. There was no attendance by the Respondents or any representative on their behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicants needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Mrs White said that they were seeking an eviction order as they wished to sell the property. They had a sale agreed with a buyer. They had previously instructed a home report to be prepared.

The Tribunal were satisfied that the ground had been met.

Mrs White said, in relation to reasonableness, that they were moving out of the rental market. They had 6 rental properties, but were finding it increasingly difficult, because of their age, to secure good terms with primary lenders. They had decided to sell one property per year, for tax purposes.

As far as the Respondents were concerned Mrs White thought that they lived at the property with one child, who was high school age. They had been offered the opportunity to buy the property but had declined. They had sent a text to the Applicants saying they had bought a new house and were waiting it to be ready. They had not committed to an exit date. There were no rent arrears

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement had a commencement date of 30th August 2019;
3. A Notice To Leave was served;
4. The correct notice period in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 has been given;
5. This Application was served on the Respondents by Sheriff Officer on 4th August 2022;
6. The Applicants intend to sell the property;
7. The Applicants have a need financially to do so.

Reasons for Decision

It is usually mandatory to grant an application under Grounds 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words “or must” were repealed.

(3)Schedule 3 (eviction grounds) has effect as if—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “3 months” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for the word “must” there were substituted “ may ”,

(ii)the words from “the landlord” to “home” were paragraph (a),

(iii)after paragraph (a) there were inserted “, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b) the word “and” were repealed,

(iii)after paragraph (c) there were inserted “, and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,

(ii)for paragraph (c) there were substituted—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) were repealed,

(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 1.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.

The Respondents did not appear at the CMD to challenge the application. The Applicants set out their reasons for selling, which were entirely appropriate. It appeared that the Respondents had secured alternative accommodation, and in all the circumstances it was reasonable to grant the eviction.

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.

Alison Kelly

Legal Member/Chair

15th September 2022

Date

