



**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**

**Chamber Ref: FTS/HPC/EV/21/0340**

**Re: Property at 8 Mossywood Court, Westfield, Cumbernauld, G68 9DR (“the  
Property”)**

**Parties:**

**Mr Matt Morrell, 12 Harlaw March, Balerno, EH14 7BS (“the Applicant”)**

**Mr Graeme Donachie, Mrs Jill Donachie, 8 Mossywood Court, Westfield,  
Cumbernauld, G68 9DR (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

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

**Background**

On 15th February 2021 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 the rental period beginning on 26<sup>th</sup> September 2019;
2. Copy Notice to Leave, undated but giving a date to leave of 7<sup>th</sup> February 2021;
3. Copy Recorded Delivery Slip dated 4<sup>th</sup> August 2020;
4. Section 11 Notice;
5. Letter from solicitor confirming property was up for sale.

The Application was served on the Respondents by Sheriff Officers on 23<sup>rd</sup> March 2021.

The Respondents' representative, Miss Rylatt of Lanarkshire Community Law Centre Ltd, sent an email to the Tribunal's administration at 17.39 on 22<sup>nd</sup> April 2021 advising that her clients would be putting forward a defence of reasonableness. This was only copied to the Tribunal members and the Applicant's representative shortly prior to the starting time of the Case Management Discussion.

## **Case Management Discussion**

The Applicant was represented by Miss Cramb of K Property. The Respondents were represented by Miss Rylatt of Lanarkshire Community Law Centre Ltd. The Respondents were both on the call.

The Tribunal introduced everyone and confirmed the purposes of a Case Management Discussion ("CMD") in terms of the Rule 17 of the Rules.

The Tribunal commented that although the written submission for the Respondents had come very late in the day it could just as easily have been made orally at the CMD, and given the defence was one of reasonableness the matter would require to proceed to a Hearing where evidence could be heard from witnesses.

Miss Rylatt confirmed that it was agreed that the Ground had been established and therefore the only matter in dispute was reasonableness.

The Tribunal adjourned the matter to a Hearing.

On 8<sup>th</sup> June 2021 the Applicant lodged Written Submissions and Bank Statements.

On 25<sup>th</sup> June 2021 the Respondents lodged further written Submissions.

## **Hearing**

The case called for a Hearing on 2<sup>nd</sup> July 2021. This took place by teleconference. The Applicant represented himself. The Respondents were represented by Miss Rylatt of Lanarkshire Community Law Centre Ltd. Both Respondents were also on the call.

Both parties confirmed that they would not be calling any witnesses and would be relying on their written submissions.

The Tribunal noted from the further Written Submission submitted by the Respondents that they no longer accepted that the ground of eviction was

established. This was on the basis that the sale had not proceeded and the property had not been readvertised for sale.

The Chairperson read out Ground 1 of Schedule 3 of the Act, which is as follows:

*1(1)It is an eviction ground that the landlord intends to sell the let property.*

*(2)The First-tier Tribunal **[F1must]** **[F1may]** find that the ground named by sub-paragraph (1) applies if the landlord—*

*(a)is entitled to sell the let property, **[F2and]***

*(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**[F3]**, 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 Applicant confirmed that it was his intention to put the property on the market for sale as soon as the Respondents had vacated. The previous sale had fallen through because the buyer did not know when he would be able to move in. The cost of getting a new home report was too expensive if he did not know that a sale could proceed.

Given the Applicant's position the Tribunal were satisfied that the ground had been established, in that the Applicant intended to market the property for sale as soon as he could.

The Tribunal took the Applicant through his submissions. He explained that the bank statements had been lodged to show the financial position in relation to the property. The account was used only for collecting the rent and paying the expenses in relation to the property. He said that the rent was £700 per month. The agents deducted their fee and he received from the £632.80 per month. He had a mortgage on the property and the payment was £231.08 per month.

The Applicant said that the Respondents had not paid any rent in January, February or March 2021. In April 2021 they began paying £300 per month. After the agent's fee deduction he received £271.20. He had not agreed to a reduction in rent.

The Applicant said that his mortgage has recently moved from a fixed rate of interest to a variable rate, and the payment had almost doubled. His partner is a nail technician and she has not worked during the pandemic. She has only recently returned to work, but is heavily pregnant and will need to stop work a month before the baby is born for covid safety purposes. The Applicant said that he was self employed installing security systems, alarms and CCTV. Work had been sparse during the pandemic. He said that his partner suffers from anxiety. The property they are in is a three bedroom house. He has an 11 year old daughter and an 8 year old son, and the parties are expecting a baby. He said that the intention had been to sell the property and either extend their current home or sell it and buy a bigger one.

Miss Rylett was given the opportunity to ask the Applicant questions but she declined.

The Tribunal took Miss Rylett through her first set of Written Submissions.

Miss Rylett confirmed that the Respondents have a three year old son, and that the First Named Respondent's two older children, also live with them. The First Named Respondent is in employment but is currently on sick leave. The Second Named Respondent is a full time mum, and until recently was receiving PIP. She has asked for a review of the withdrawal and has a hearing in relation to that this afternoon.

The First Named Respondent suffers from depression and myasthenia gravis. A report from his doctor confirming this is lodged. The report confirms that stress adversely affects both conditions.

The Second Named respondent suffers from Generalised Anxiety Disorder. She is unable to work as a consequence. A report from her doctor confirming this is lodged. It confirms that this is a long term condition and can be aggravated by stress.

The Respondents have sought alternative accommodation in both the private sector and with the Council. They require at least 4 bedrooms. They cannot leave the property as they will be deemed as intentionally homeless. The Council cannot search for a property for them until they are homeless.

The First Respondent's older children are a 16 year old daughter and a 13 year old son. They attend a school which is a 10 minute drive from the property. Their mother has addiction issues which has had a significant impact on the children. It has had a detrimental impact on their well being. They moved from Somerset to live with their father in 2017. The 13 year old receives support at school. They are vulnerable. They found it difficult to settle when they moved to Scotland. The Respondents are concerned that leaving their current home will have an adverse effect on them.

The Respondents have produced a letter from Joanne McMillan, PT Pupil Support at Cumbernauld Academy. She confirms that stability is a must for the children.

The Tribunal turned to Miss Rylett's Second Written Submission. She said therein that the Tribunal should disregard the Applicant's submission about rent arrears. She said that the ground of eviction being used was not rent arrears. She submits that the Respondents are not to blame for the failed sale. They are not legally obliged to leave the property until an eviction order is granted. She reiterates her previous submissions regarding the welfare of the children and the impact on the health of both Respondents.

The Tribunal asked Miss Rylett if her clients accepted that they were in arrears of rent. She said that they did, but that they had spoken to the letting agent at the time and she had told them to just pay what they could afford. Miss Rylett said that she could submit call logs to show the calls being made. The logs did not record the content of the calls. The Tribunal did not think it was necessary for her to submit the logs. The Tribunal said that they would adjourn for a short period at the end of the hearing to allow Miss Rylatt to take further instructions on the proposals for bringing the arrears up to date.

The Tribunal adjourned for 10 minutes.

On resumption Miss Rylett told the Tribunal that the Respondents were not eligible for Housing Benefit due to the First Respondent's earnings. He had been off sick since 11<sup>th</sup> June 2021 and is entitled to sick pay for 4 months. She did not confirm the amount of the sick pay. There is a shortfall in the Respondents' income due to the loss of PIP. Income was also affected during the pandemic due to the First Named Respondent being put on furlough. She said that it was never the intention of the Respondents to remain in arrears of rent. They had discussed it with the letting agents and made their financial position clear. Their intention was to bring the rent up to date from any backdated PIP payment. The Applicant also held a deposit which could be used towards arrears.

The Tribunal asked the Applicant if the Respondents had been in rent arrears at the time the Notice to Leave was served. He said that they had not been.

No one wished to ask any further questions or make any further submissions.

The Hearing concluded. The Tribunal decided to consider matters and issue a finding in writing.

### **Findings In Fact**

1. The parties entered in to a tenancy agreement for the property dated 26<sup>th</sup> September 2019;
2. The monthly rent was £700;
3. The Applicant served on the Respondents a Notice to Leave on 4<sup>th</sup> August 2020 with a date to leave of 7<sup>th</sup> February 2021;

4. At the time of service of the Notice the Respondents were not in arrears with their rent payments;
5. The Applicant placed the property on the market and received an offer for sale;
6. The sale fell through as the Applicant could not give a clear idea of the date of entry;
7. The Applicant lives in a three bedroom house with his partner, his two children and they are expecting a baby;
8. The Applicant intends to use the free proceeds of sale of the property to extend his current home or buy a new one;
9. The Applicant has a mortgage on the property;
10. The Applicant and his partner have both had their incomes affected by the pandemic;
11. The Respondents live in the property with three children;
12. Both Respondents suffer from ill health which can be aggravated by stress;
13. The First Named Respondent's older two children moved to Scotland to live with him in 2017 due to their mother's addiction issues;
14. The children had difficulty settling in and have support from their school;
15. The Respondents have been endeavouring to find alternative accommodation without success;
16. The First Named Respondent's income has been affected by being furloughed and then being on sick leave;
17. The Second Named Respondent's income has been affected by the withdrawal of PIP;
18. The Respondents are in arrears of rent;
19. The local authority cannot look for accommodation for the Respondents until they are homeless;
20. The Applicant's income has been further affected by the rent arrears.

## Reasons For Decision

The Tribunal held that the Applicant had established the ground of eviction, being Ground 1 of Schedule 3 of the Private Housing (Residential Tenancies) (Scotland) Act 2016. He owned the property and he intended to place it on the market for sale within three months of the Respondents vacating.

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. 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 gave consideration to the factors put forward for each party.

The Applicant owns one rental property. He has decided that he wishes to sell it. Until the enactment of the Coronavirus (Scotland) Act 2020 the Tribunal would have had no choice but to grant the order as it was mandatory to do so. The Applicant would not have needed to provide any details to justify his decision. In some cases the Landlord will serve a Notice using ground 1 when there are other factors at play, such as rent arrears. In this case there were no rent arrears at the time the Notice to Leave was served. There is nothing to suggest, and no one has suggested, that the Applicant’s desire to sell is not genuine. The Applicant cited his own financial and family circumstances.

The Respondents find themselves in a difficult position. They are both suffering from ill health which can be exacerbated by stress. They have both suffered loss of income, the First Named Respondent as a result of the pandemic and his own health. They have the care of two vulnerable teenagers who have suffered distress and upheaval in the last few years. They are settled at school and stability is important for them. There is a lack of the type of accommodation they require, both in the public and private sector. The uncertainty of the local authority’s homeless system is very stressful.

The Tribunal weighed up all the factors put forward. The Tribunal had sympathy for both parties, however they considered that it was reasonable to grant the order for eviction. The Applicant wishes to sell the property. It is unlikely that his view will change. His financial and family circumstances have led him to his decision. The Respondents' circumstances are also difficult. However, the local authority cannot begin looking for a suitable property for the Respondents until they are homeless. If the order is not granted the process cannot start. The Tribunal had sympathy for both parties, however they considered that it was reasonable to grant the order for 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.**

**Legal Member: Alison Kelly**

**Date: 2<sup>nd</sup> July 2021**

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