



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

**Chamber Ref: FTS/HPC/EV/21/1152**

**Re: Property at 14 Clement Rise, Livingston, EH54 6JY (“the Property”)**

**Parties:**

**Mr Adrian Kay, 54 Chuckethall Road, Livingston, West Lothian, EH58 8FB (“the Applicant”)**

**Mr Gordon Clark, Mrs Clare Clark, 14 Clement Rise, Livingston, EH54 6JY (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Mike Scott (Ordinary Member)**

**Decision (in absence of the First-Named Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.**

- Background
- 1. An application dated 13 May 2021 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
- 2. A Case Management Discussion (“CMD”) took place on 23 July 2021 by tele-conference. The Applicant was personally present. Mrs Gill of Shelter Scotland

appeared on behalf of the Second-Named Respondent. There was no appearance by or on behalf of the First-Named Respondent. The Tribunal was satisfied that the application had been intimated on the First-Named Respondent by way of Sheriff Officer on 21 June 2021 and accordingly the First-Named Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the First-Named Respondent's absence.

3. The Applicant moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 8 November 2018. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondents on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 31 August 2020. Said Notice stated that proceedings could not be raised before 3 March 2021. The Second-Named Respondent remained resident in the Property. It was believed that the First-Named Respondent had vacated a few weeks prior to the CMD following a marriage breakdown.
4. Mrs Gill on behalf of the Second-Named Respondent submitted that the Second-Named Respondent did not dispute that the Applicant wanted the Property back with the intention of selling. She had been offered alternative accommodation by the local authority and had signed the lease for same. She was in the process of organising her move to the new property. She sought a four week continuation of the CMD to allow the Second-Named Respondent more time to have a funding application processed to fund the removal costs. The application had been submitted last week. She had no income nor savings, following the breakdown of her marriage. She had made a claim for Universal Credit and would receive funding for payment of both properties for a 28 day period to help facilitate the move. She would therefore be moving within that period before the double-payment stopped. She has three children aged 13, 7 and 6. She suffers from anxiety. Mrs Gill was concerned that if the Order was granted this would cause her to panic.
5. The Applicant opposed a continuation of the CMD and again sought the order. He submitted that he had been reasonable with the Respondents and that they had had sufficient notice of the requirement to move out in order for them to sell the Property, having been formally served notice of this in August 2020. The First-Named Respondent had already moved out and there was no prejudice to the Second-Named Respondent in granting the order as the Second-Named Respondent already had alternative accommodation to move into.
6. The following documents were lodged alongside the application:
  - (i) Copy Private Residential Tenancy Agreement
  - (ii) Copy Notice to Leave
  - (iii) Proof of service of the Notice to Leave
  - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
  - (v) Letter from Property Connections dated 31 May 2021 confirming instruction re marketing the Property for sale.

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 8 November 2018;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant is entitled to sell the Property;
- (iv) The Applicant intends to sell the Property;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (vi) The Applicant has provided a letter of engagement from an estate agent regarding the marketing of the Property.

- Reasons for Decision

8. Section 51 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows:

*“51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”*

9. Ground 1 of Schedule 3 to the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows:

*“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.”*

10. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met. This was not opposed by the Second-Named Respondent. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

11. The Tribunal was required to take into account the reasonableness of granting the order, in terms of the relevant provisions of the Coronavirus (Scotland) Act 2020. The Tribunal was satisfied that it was reasonable to grant the order sought. The First-Named Respondent had already moved out of the Property. The Second-Named Respondent had obtained alternative accommodation for her and her children to move into, and her lease had already commenced. The granting of the Order would not render her, nor her children, homeless. Whilst it was acknowledged that a funding application to meet the removal costs had not yet been determined, it was submitted that it was hoped that this would be processed within the next week. Accordingly, the Tribunal did not consider there any necessity to continue the CMD for a further period. The Applicant had demonstrated to the Tribunal that the ground had been met (and this was not opposed by the Respondents). The Second-Named Respondent had submitted that her double-housing funding would only last for 28 days and therefore she would need to move within that timescale in any event. The order would not be issued for another 30 days in terms of the Rules, so could not be enforced before then. Clearly if the Second-Named Respondent does indeed move out within the next 28 days then there will be no requirement for the Applicant to formally enforce the Order. However, the tribunal considered that the Applicant was entitled to certainty that should the Second-Named Respondent fail to remove for any reason, then he would have the benefit an Order should he require it.

- Decision

12. The Tribunal granted an order against the Respondents for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

## **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: Mrs Fiona Watson**

**Date: 23 July 2021**