



**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/CV/21/1226**

**Re: Property at 22 Freeland Drive, Bridge of Weir, PA11 3QJ (“the Property”)**

**Parties:**

**Mr Paul Brooks, 5a Belhaven Terrace, Glasgow, G12 0TF (“the Applicant”)**

**Mr Peter McGuigan, 22 Freeland Drive, Bridge of Weir, PA11 3QJ (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member) and Angus Lamont (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent**

**Background**

- 1 By application to the Tribunal the Applicant sought an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Copy Private Residential Tenancy Agreement between the parties dated 6 March 2019;
  - (ii) Notice to Leave dated 20 October 2020 stating that proceedings for possession will commence no earlier than 23 April 2021 and citing ground 1, together with proof of delivery;
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Renfrewshire Council;

- 2 The Tribunal was also in receipt of the Land Certificate for the property under Title Number REN78470 which confirmed the registered owner as Paul Brooks.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. At the same time a Direction was issued to the parties requiring the Applicant provide evidence that ground 1 applied. By email dated 24 June 2021 the Applicant provided copy correspondence from Homefinders Estate and Letting Agents confirming that they had been instructed to market the property and a Home Report would be required.
- 4 A Case Management Discussion was therefore assigned for 6 September 2021, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 5 On 20 August 2021 the Tribunal received an email from Alex Hendrickson, a Development Worker with the MECOPP Carers Centre who had been instructed to submit written submissions on behalf of the Respondent. Mr Hendrickson clarified that he had not been asked to represent the Respondent at the Case Management Discussion, the Respondent simply wished his written representations to be taken in account. In summary Mr Hendrickson submitted that the Respondent was a vulnerable elderly individual with health problems and had faced significant barriers in obtaining alternative accommodation. This was further complicated by his requirement for a ground floor property and the ongoing coronavirus pandemic. The Respondent had understood the arrangement with the Applicant to be a long term let and it was unreasonable that the Applicant was now seeking to terminate the tenancy. If the order was granted the Respondent would likely have to present as homeless to the local authority and had serious concerns about going through that process. Mr Hendrickson confirmed that the Respondent was making efforts to obtain alternative accommodation but had so far been unsuccessful due to the challenges outlined. A copy of the representations were crossed over to the Applicant.

#### **Case Management Discussion**

- 6 The Case Management Discussion took place by teleconference on 6 September 2021. The Applicant was represented by Campbell Gisby of Homefinders Estate and Letting Agents. The Respondent was not present.
- 7 The Tribunal noted the terms of the written representations from Mr Hendrickson on the Respondent's behalf. Mr Hendrickson had indicated that the Respondent would not be represented at the Case Management

Discussion. The Tribunal further noted that the Respondent had received the application paperwork together with the benefit of advice from an independent agency. On that basis the Tribunal determined to proceed with the Case Management Discussion in his absence.

- 8 Mr Gisby proceeded to address the Tribunal on the Applicant's behalf. He explained that the Applicant sought an eviction order and clarified that he was intending on selling the property. The property had been rented out for approximately eight years, and the Applicant had been content with that arrangement. However he was self employed and had recently experienced financial hardship due to the impact of the coronavirus pandemic on his business. Accordingly he now required to sell the property.
- 9 In response to questions from the Tribunal Mr Gisby confirmed that he had endeavoured to assist the Respondent in sourcing alternative accommodation. He had spoken with the Respondent about various ways to register with letting agents in the area. However there were not many properties in the Inverclyde area which suited the Respondent's wants and needs. The Respondent was restricting his search to Bridge of Weir which further reduced the pool of properties available. His criteria was a one bed ground floor property and these were scarce. Mr Gisby noted that it was now nearly a year since the Notice to Leave had been served and the Respondent was no further forward. Mr Gisby was unaware of the Respondent having viewed any other properties and was of the view that he required to expand his search criteria as it was far too restrictive. It was a disappointing situation to be in, as the Respondent had been a good tenant and the Applicant would be more than happy to provide him with a positive reference. However the Applicant's situation was becoming increasingly urgent, he was getting close to falling behind on mortgage payments and he was fairly desperate as a result to sell the property. Mr Gisby advised that he would continue to assist the Respondent in the event that an order for repossession was granted.

### **Relevant Legislation**

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

#### ***51 First-tier Tribunal's power to issue an eviction order***

*(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.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*

*(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) the eviction ground mentioned in subsection (3), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a)*

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*

*(b) that the tenant has a relevant conviction, [ground 13]*

*(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

*(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3, Part 1**

*1 Landlord intends to sell*

*(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, and*

*(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.*

## **Findings in Fact and Law**

- 11 The parties entered into a Private Residential Tenancy Agreement dated 6 March 2019.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 The Respondent has been served with a Notice to Leave dated 20 October 2020 stating that proceedings for possession will commence no earlier than 23 April 2021 and citing ground 1 of Schedule 3 of the 2016 Act.
- 14 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 15 The Applicant is the registered owner of the property.
- 16 The Applicant therefore has title to sell the property.
- 17 The Applicant requires to sell the property due to his financial circumstances.
- 18 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

## **Reasons for Decision**

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. Having had regard to the written representations submitted by the Respondent and the verbal submissions from Mr Gisby at the Case Management Discussion the Tribunal did not consider there were any issues to resolve that would require a Hearing

to be fixed. There was no dispute between the parties regarding the substantive facts of the case.

- 22 The Tribunal was satisfied on the basis of its findings in fact that the Applicant had title to sell the property and intended to do so within three months of the Respondent having vacated. The Tribunal accepted that his intention was genuine in this regard, based on the submissions made by Mr Gisby at the Case Management Discussion. The issue for the Tribunal to determine was therefore whether it would be reasonable to make an order for repossession which was an exercise of judicial discretion taking into account the particular facts and circumstances of the case.
- 23 The Tribunal considered the fact that the Respondent had been given notice of the Applicant's intention to sell the property in October 2020 thereby giving him nearly a year to obtain alternative accommodation. The Tribunal also noted that he was actively seeking accommodation, with support from family and MECOPP, and that the granting of the order may assist in that process in terms of the availability of accommodation from the local authority. The Tribunal accepted that Mr Gisby had also been attempting to assist the Respondent in sourcing another property and would continue to do so. It also appeared to the Tribunal that the Respondent may require to expand his criteria in order to find something suitable for his needs, perhaps looking out with the Bridge of Weir area.
- 24 Whilst the Tribunal did have concerns regarding the Applicant's vulnerability and the potential impact of making an order against him, it had to consider the ongoing prejudice to the Applicant in his inability to sell the property in order to address the financial difficulties he was experiencing and in doing so, the Tribunal did have cognisance of the length of time since the Notice to Leave had been served. On that basis, the Tribunal considered it would be reasonable to make an order for repossession of the property. However, in order to give the Respondent some further time to find alternative accommodation the Tribunal determined to suspend enforcement of the order until 29<sup>th</sup> October 2021. The Tribunal has also requested that Mr Gisby alert the local authority to the making of the order, to ascertain whether further assistance can now be provided to the Respondent as an elderly and vulnerable individual.
- 25 The Tribunal therefore determined to make an order for eviction, with enforcement suspended until 29<sup>th</sup> October 2021.
- 26 The decision of the Tribunal was unanimous.



## 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.



**Ruth O'Hare**  
Legal Member/Chair

**6 September 2021**  
Date