



**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/21/1853**

**Re: Property at Drumblair, Baker Road, Melrose, TD6 9NA (“the Property”)**

**Parties:**

**Mr Maurice Stevenson, Mrs Jacqueline Stevenson, 86a Strines Road, Stockport, SK6 7DU; 86a Strines Road, Marple, Stockport, SK6 7DU (“the Applicant”)**

**Mr Tony Eyoma, Ms Wendy King, Drumblair, Baker Road, Melrose, TD6 9NA (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

1. An application was received by the Housing and Property Chamber dated 30<sup>th</sup> July 2021. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
  - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 5<sup>th</sup> April 2019;
  - b. Notice to Leave signed 5<sup>th</sup> January 2021 stating an application would not be submitted to the Tribunal before 8<sup>th</sup> July 2021;
  - c. Section 11;
  - d. Copy email dated 5<sup>th</sup> January 2021 serving Notice to Leave upon the Respondents;

- e. Terms of business from Rettie & Co and signed as accepted by the Second Named Respondent, Mrs Jacqueline Stevenson dated 12<sup>th</sup> June 2021 for the sale of the Property; and
  - f. Title deeds ROX1047
3. On 9<sup>th</sup> September 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 12<sup>th</sup> October 2021 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 30<sup>th</sup> September 2021.
  4. On 10<sup>th</sup> September 2021, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondents by letterbox service. This was evidenced by Certificate of intimation dated 10<sup>th</sup> September 2021.

### The Case Management Discussion

5. A CMD was held on 12<sup>th</sup> October 2021 at 2pm by teleconferencing. The Applicant was represented by Ms Emma Tenby of Rettie & Co. The Respondents were both present.
6. The purpose of the Tribunal was to determine whether the Applicants had a true intention to sell the Property within 3 months. The application did not concern any fault on behalf of the Respondents.
7. Ms Tenby told the Tribunal that the Applicants position remained the same in that they are seeking an eviction order. She told the Tribunal that the Applicants are in their 80s and have poor health which has deteriorated recently. They sold their family home to move nearer their son approximately 1 year ago. However, the area they now live in is in a more expensive area than they had previously lived in. They need to sell this property to fund their living and care needs. They have taken out loans as a temporary measure. This has caused them a significant amount of stress.
8. The Respondents told the Tribunal that they had lived in Melrose since 2011. They are settled there and have children that live nearby. They look after their grandchildren at the weekends. They both work. Mr Eyoma drives to Edinburgh to work. Ms King works locally. She cannot drive so is reliant on being able to walk to work or take the bus when Mr Eyoma is not available to drive her. For this reason they have restricted their search to allow Ms King to be able to get to work. They have looked at 5 – 10 properties in the period since April 2021. Each property has had approximately 30 applicants. They have registered with Scottish Borders Housing Association and have been given a gold priority. They have been told that they will get given a property once one comes up in the area that they have selected. The Respondents want to move where they can settle. Ms King told the Tribunal that moving job was not something that she was prepared to do although she could get work elsewhere. Mr Eyoma noted that this situation had caused the Applicants stress but that it was the same for Ms King and him.

9. Ms Tenby raised that there are currently 11 properties for let on the Prime Location website and a total of 24 in the Borders region. She is of the view that the Respondents have had sufficient time to find a property as they were given the Notice to Leave in January 2021.
10. Ms King noted that some of these properties were flats and she was not prepared to rent a flat. She noted that it was her choice but that she needed a two bedroom property with a garden for her grandchildren visiting and did not want to live in a flat. They have been looking since April. Mr Eyoma agreed. He noted that if they moved to a private flat they would lose their placing with Scottish Borders Housing Association who would provide a property with more security in terms of the lease. They might have to move into temporary Council provided accommodation if they were made homeless. He does not want to move again. Ms King noted that she worked in a care home and understood the Applicants position but that this has occurred without any fault on the Respondents part.

#### Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 5<sup>th</sup> April 2019.
12. The Applicants have taken active steps to indicate that they intend to sell the Property within 3 months of the Respondents leaving. They have already sold their own house and require the sale of this house to provide funds in terms of the move.
13. The Applicants have taken steps to sell the property and is seeking to do so within a 3 month period.
14. The application to evict the Respondents is solely in relation to the Applicants wishing to sell their property.
15. The Respondents started looking for a new property in April 2021 although the Notice to Leave was served on 5<sup>th</sup> January 2021. They have looked at 5 -10 properties since.
16. The Respondents are not willing to move to a flat or Ms King move job in order to secure another tenancy.
17. There is no dispute between parties that the Applicants wish to sell the Property.
18. The Tribunal noted that the situation was stressful for both parties. It found that it was reasonable, on the balance of probabilities, that the Applicants be granted an order based on ground 1.

## Decision

19. While the Tribunal accepted that there was no fault on the part of the Respondents, it found that ground 1 has been established and granted an order in favour of the Applicant.

## 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.**

**G Miller**

**12<sup>th</sup> October 2021**

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**Legal Member/Chair**

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**Date**