



**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/22/1491**

**Re: Property at 9 Gilcomstoun Land, Aberdeen, AB10 1TA (“the Property”)**

**Parties:**

**Mrs Linda Poole, 11 Robin Hood Meadow, Helmel, Hempstead, HP2 6NH (“the Applicant”)**

**Mr Marcus Poole, 9 Gilcomstoun Land, Aberdeen, AB10 1TA (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. On 18<sup>th</sup> May 2022, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 1<sup>st</sup> June 2022, the application was accepted for determination by the Tribunal.
3. A case management discussion was held on 12<sup>th</sup> August 2022. It was held by audio conferencing.

**The case management discussion**

4. Ms Linda Fyffe of Laurie and Co, solicitors, represented the Applicant.

5. The Respondent was not present and the tribunal noted that the arrangements for the case management discussion had been intimated to the Respondent by Sheriff Officer on 6<sup>th</sup> July 2022.

6. The Legal Member explained the purpose of a case management discussion. Ms Fyffe invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 1, Part 1 of Schedule 3 of the 2016 Act have been met.

7. Findings in Fact

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 20<sup>th</sup> December 2019.
- (ii) The monthly rent currently due under the private residential tenancy is £300.

8. Finding in Fact and Law

The Applicant intends to sell the Property.

9. Documents before Tribunal

- (i) Private residential tenancy agreement dated 20<sup>th</sup> December 2019.
- (ii) Copy Notice to Leave dated 7<sup>th</sup> October 2021.
- (iii) Letter to Respondent from Applicant's solicitors dated 7<sup>th</sup> October 2021.
- (iv) Copy Section 11 intimation to local authority dated 18<sup>th</sup> May 2022.

10. The Law

**Section 51 of the 2016 Act:**

**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 or must 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.*

***Ground 1, Part 1 of Schedule 3 of the 2016 Act***

**Let property required for another purpose  
Landlord intends to sell**

- 1(1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal must 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.
- (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.

***Schedule 1 of the Coronavirus (Scotland) Act 2020 as continued by the  
Coronavirus (Extension and Expiry) (Scotland) Act 2021***

- 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—
- (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.”

### Discussion

11. Ms Fyffe said that the Respondent is the son of the Applicant. She said that the Respondent had lived in the Property for some time prior to the private rented tenancy agreement being entered into.
12. Ms Fyffe said that the rent had been paid intermittently but that this was not the reason for the Applicant seeking recovery of the Property. She said that the Applicant had intended the Property to be a source of income during her retirement but that it was no longer suitable for her to retain it as such. Ms Fyffe explained that the Applicant and her husband are not in the best of health and, since they live in Hemel Hempstead, it was not easy for them to manage a rental property in Aberdeen. She said that her client wants to sell the property to access funds which she can use for income.
13. Ms Fyffe said that the Applicant had been prepared to sell the Property to the Respondent for its market value and that this is still her position. She referred to the letter dated 7<sup>th</sup> October 2021 which her firm had sent to the Respondent with the notice to leave in which he had been advised that the Applicant was prepared to sell the Property to him. Ms Fyffe said that the Applicant had not responded to the notice to leave or the letter offering to sell the Property.
14. Ms Fyffe said that her firm had been instructed to sell the Property when vacant possession had been achieved and she referred to the terms of business letter which her firm had sent to the Applicant on 17<sup>th</sup> August 2021. She submitted that this complied with the requirements of the 2016 Act and evidenced that the Applicant intends to sell the Property.

### Reasons for Decision

15. The tribunal saw no reason for determination of the application to be continued to a Hearing. Ms Fyffe said that she had no additional evidence which she wanted to lead. The tribunal was satisfied that the Respondent had been advised of the case management discussion but had chosen not to engage with the Tribunal process.
16. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003.
17. The tribunal accepted that the terms of business letter dated 17<sup>th</sup> August was evidence that the Applicant intends to sell the Property.

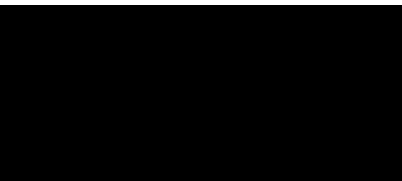
18. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.
19. The tribunal knew nothing about the Respondent's position in relation to the application. He had chosen not to make written representations and had not participated in the case management discussion.
20. The tribunal considered that it was reasonable for a landlord to sell a property if circumstances changed. The Applicant now is unable to easily manage a rental property some distance from her place of residence and the tribunal accepted that this difficulty would be exacerbated by ill health. The tribunal noted that the Applicant had offered to sell the Property to the Respondent but that he had not responded.
21. In the particular circumstances of this application the tribunal determined that it is reasonable for the Applicant to recover the Property.

#### Decision

22. The tribunal determined that the application be granted and that an eviction order be made.

#### **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  
12<sup>th</sup> August 2022**