

Housing and Property Chamber
First-tier Tribunal for Scotland



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 and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/22/2619

Re: Property at 24 Birchview Court, Inshes Wood, Inverness, IV2 5WA (“the Property”)

Parties:

Mr Simon Matthews and Mrs Julia Matthews, Taigh An Tursa, Tongue, Lairg, Sutherland, IV27 4XJ (“the Applicants”) per their agents Thorntons Law LLP, Citypoint, 3rd Floor, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicants’ Agents”)

Ms Fozia Siddique, residing at 30 Moorfield Street, Halifax, HX1 3AY and Mr Adnan Abbas residing at 24 Birchview Court, Inshes Wood, Inverness, IV2 5WA (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order with effect from 10 January 2023.

1. By application received on 29 July 2022 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on Ground 1, the landlord intends to sell the let property of Schedule 3 to the Act. The Application comprised copy Notice to Leave dated 22 January 2022, copy private residential tenancy agreement between the Parties with an entry date of 10 July 2020, copy instructions to market the Property for sale, and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to The Highland Council, being the relevant local authority. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 8 November 2022 at 14.00 by telephone conference. The CMD was intimated to the Parties and, in particular, was served on

the first-named Respondent by sheriff officer on 5 October 2022 and on the second-named Respondent by sheriff officer on 4 October 2022.

CMD

2. The CMD took place on 8 November 2022 at 14.00 by telephone. Mr. Calvin Gordon of the Applicants' Agents took part on their behalf accompanied by the first-named Applicant. Both Respondents took part.
3. The Tribunal explained that the purpose of the CMD was to identify the facts of the matter, to establish if the ground for the Application is satisfied and to determine if it is reasonable for the Tribunal to grant the Order. The Tribunal noted from the Application that the correct statutory procedures had been carried out.
4. With regard to the Applicants' intention to sell, Mr. Gordon advised the Tribunal that, as set out in the Application, the Applicants intend to sell the Property as part of their retirement pension. The first-named Applicant is a minister of religion who is now retired. The Property had been bought as a buy to let pension investment and the intention is to sell it to release capital. As the Applicants will move outwith Scotland on retirement, they will not be in a position to manage the Property. Mr. Gordon advised the Tribunal that the Respondents have accrued over £8,000.00 in rent arrears and that, although Universal Credit has been paid towards half of the monthly rent recently, the arrears continue to increase, imposing a further financial burden on the Applicants. The first-named Applicant advised the Tribunal that the Applicants find themselves in arrears of rent with their own tenancy due to retirement and insufficient income from the Property. Mr. Gordon confirmed to the Tribunal that the Applicants own only the Property and do not have a portfolio of other properties.
5. The first-named Respondent advised the Tribunal that she has not resided in the Property for a considerable time and has accommodation elsewhere. The second-named Respondent advised the Tribunal that he is not in work at present and receives Universal Credit. He accepted that rent arrears have accrued and continue to accrue as the Applicants have refused his request to amend the tenancy to his sole name. The first-named Applicant refuted that the Applicants had been requested to do this. The second-named Respondent advised the Tribunal that he has made enquiries for alternative accommodation with local housing agencies without success and that he resides in the Property on his own.

Issue for the Tribunal

6. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision on both the statutory ground and reasonableness and so proceeded to determine the Application.

Findings in Fact

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Parties;

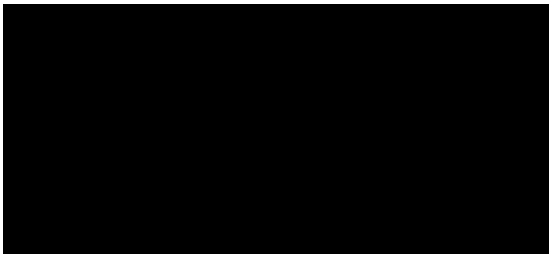
- ii) The Property is part of the Applicants' retirement and pension fund;
- iii) The Applicants are now retired and require access to the capital which will be released from the sale of the Property;
- iv) The Applicants require to sell the Property to fund their retirement;
- v) The Respondents have accrued over £8,000.00 in rent arrears which places an additional financial burden on the Applicants;
- vi) The Applicants are struggling financially to sustain the cost of the Property and also require to sell for those financial reasons;
- vii) The Applicants have carried out the statutory processes required by the Act;
- viii) The first-named Respondent has vacated the Property;
- ix) The second-named Respondent resides in the Property on his own;
- x) The second-named Respondent has not been in employment and is not entitled to benefits to meet the cost of the full rent of the Property;
- xi) The second-named Respondent is unable to pay the full rent for the Property;
- xii) The second-named Respondent has made attempts to secure alternative accommodation without success.

Decision and Reasons for Decision

8. The Tribunal had regard to all the information before it and to its Findings in Fact and found that the statutory ground is established.
9. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the fact that the Property forms part of the Applicants' pension fund, that they are now retired and require access to that fund and that it is untenable for them to continue to finance the cost of the Property. The Tribunal noted that the first-named Respondent has vacated the Property and that the second-named Respondent resides in the Property on his own. The Tribunal had regard to the fact that the second-named Respondent has not been in employment and cannot meet the full cost of the rent for the Property. The Tribunal took the view that continuing the tenancy on this basis places an additional and continuing financial burden on both Parties. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. However, in the circumstances the Tribunal considered it appropriate to allow the Respondent sufficient time to secure local authority or social rented accommodation and so determined that the date on which the Order should come into effect is 10 January 2023.

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.



8 November 2022

Legal Member/Chair

Date