



**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/22/2828**

**Re: Property at 19c Lothian Road, Greenock, PA16 0PG (“the Property”)**

**Parties:**

**Mr Christopher Lyle, 21 Langhouse Place, Inverkip, PA16 0EW (“the Applicant”)**

**Ms Wilma McCann, 19c Lothian Road, Greenock, PA16 0PG (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

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

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an Eviction Order.

Service of the proceedings and intimation of the Case Management Discussion (CMD) took place upon the respondent by Sheriff Officers on 5 December 2022.

The CMD took place by teleconference on 13 January 2023 at 2.00 pm. The applicant joined himself and was represented by Ms Lauren Tighe of Jackson Boyd solicitors. The respondent joined personally and represented her own interests.

The respondent had written to the tribunal by email on 16 December 2022 to advise that she had no opposition to the proposed eviction application. She addressed the

tribunal at length regarding her personal circumstances and difficulties but did not offer formal opposition to the application.

### Findings and Reasons

The property is 19c Lothian Road, Greenock PA16 0PG. The applicant is Mr Christopher Lyle who is the heritable proprietor of the property and the registered landlord. The respondent is Ms Wilma McCann.

The parties entered into a private residential tenancy in respect of the property which commenced on 18 May 2018.

The applicant relies upon ground 1 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to sell the let property. Ground 1 was originally drafted as a mandatory ground for eviction. All eviction grounds are now discretionary. Additionally the notice periods were extended due to the coronavirus. The relevant notice period under ground 1 was previously one of 84 days and at the time that the notice to leave was served was one of 6 months.

The notice to leave relied upon in the eviction application has been prepared in accordance with the provisions of Section 62 of the Act. This requires an additional two days to be added on for deemed service of the notice and an additional one day at the end. The date specified in the Notice to Leave, being the earliest day of the relevant proceedings being initiated to the tribunal, should therefore be calculated at a total of 6 months plus 3 days from the date of completion.

The notice to leave relied upon in this case is dated 9 February 2022 and stipulates that the earliest an application be submitted to the tribunal would be 11 August 2022. On the face of it the notice is therefore one day short and invalid. The presumption of two days to serve the notice to leave is however rebuttable and there is evidence of service in the form of a Sheriff Officer's execution. The service of the Notice to Leave took place upon the respondent on 10 February 2022. The Notice to Leave, served upon the respondent and relied upon in this application, is therefore valid. The required period of notice was given.

The applicant's circumstances have changed since letting out the property which has caused him to wish to sell it. He has been diagnosed with depression. Costs associated with the maintenance of the let property are rising. The respondent is in rent arrears. He is employed in IT by Amazon in Greenock and faces the prospect of being made redundant due to the recent revelation that they are closing that site. He has significant financial commitments to meet.

In support of the ground of eviction the applicant has produced email correspondence with Pattinson Auctions who he wishes to instruct to sell the property. This firm is in England but the applicant explained that the company has associations with linked auction companies in Scotland. He has also explored the

sale of the property using Purple Bricks Estate Agents. He has been unable to take matters further due to the lack of ability to obtain a Home Report given the respondent's occupation of the property.

The tribunal was satisfied on the basis of all of the evidence that it is the applicant's genuine intention to sell the let property. Ground 1 was established. The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.

The respondent is 55 years of age. She is unemployed. She lives with her 16 year old daughter. The respondent has physical and mental health problems. She has mobility restrictions and is awaiting spinal surgery. She has had long term mental health problems, and has a diagnosis of bipolar disorder. The respondent requires a ground floor property due to her physical health problems. The let property is not on the ground floor.

A relevant Section 11 notice has been issued to the relevant local authority. The tribunal was satisfied that the respondent will be provided with alternate accommodation in the event of an eviction order being made against them. The respondent has already had discussions with them and local housing associations.

The respondent has not been maintaining the contractual rental payments. There was a dispute regarding the exact level of arrears which are outstanding but the respondent accepted that some arrears, perhaps a couple of months are. No payment are currently being made. The respondent is receiving housing benefit at a level which covers the majority of the rent but that is not being paid to the applicant's letting agent. It is unreasonable to require the applicant to continue to make the property available for the respondent.

Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order.

The Tribunal extended the usual 30 day period for enforcement of the order in recognition of the personal circumstances of the respondent. The standard 30 day period was extended to a period of 6 weeks ie to 24 February 2023. This is fair and proportionate.

## **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.**

Richard Mill

13 January 2023

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Legal Member/Chair

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Date