



**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**

**Chamber Ref: FTS/HPC/EV/22/2911**

**Re: Property at 72 Almondell Road, Broxburn, West Lothian, EH52 5QJ (“the  
Property”)**

**Parties:**

**Mr Ian Waddell, 3 Old Mill Road, Broxburn, West Lothian, EH52 5HW (“the  
Applicant”)**

**Mr Kenneth McIlroy, 72 Almondell Road, Broxburn, West Lothian, EH52 5QJ  
 (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 be granted in that the landlord intends to sell the let property for market value or at least put it up for sale within three months of the tenant ceasing to occupy it and finds that it is reasonable to grant the order.

**Background**

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was submitted to the tribunal on the 16th of August 2022 and accepted by the tribunal on 25th October 2022.A case management discussion was set down for 20<sup>th</sup> January 2023 at 10am.

**Case Management Discussion**

2.The case management discussion was attended by Mr Gavin Smith of KnightBain Letting agents on behalf of the Applicant and the Respondent Mr McIlroy attended and represented himself.

3. The Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, an e-mail sending the Notice to Leave to the Respondent, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, and e-mail sending this to the relevant local authority, a letter from KnightBain Letting Agents confirming that they are instructed to market the property for sale by the Applicant if vacant possession is granted and an email from the Applicant confirming that he wished to sell the property. The Respondent Mr McIlroy confirmed he had received the application and papers and had had an opportunity to read these.

4. Mr. Smith on behalf of the Applicant indicated that KnightBain had been contacted by the Applicant as his circumstances had changed and he needed to realise his assets and as a result he had instructed the firm to seek an eviction order. In the event that the order was granted KnightBain was instructed to market the property for sale when it was vacant. Mr. Smith indicated he understood that this was to take place as soon as the property was vacant. The tenancy agreement had been entered into on 14<sup>th</sup> July 2018 between the Applicant as landlord and owner of the property and the Respondent.

5. Mr McIlroy indicated that he had no objection to an eviction order being granted. He regarded this as a reasonable request on the part of the landlord and said that this was his prerogative. He said he had taken steps to try to secure other accommodation in July of 2022. He said it had become clear that the prices for private letting were too high for him now. He lives at the property with his partner and their two teenage children who share a bedroom. He was therefore looking for local authority housing as soon as possible. He indicated that he did not want to suggest that the granting of an eviction order would be unreasonable.

6. The tribunal legal member raised an issue with the Notice to Leave. In Part Four of the Notice to Leave, the earliest date which the Applicant was said to be able to apply to the Housing and Property Tribunal was said to be 26 July 2022. The Notice to Leave had been intimated by e-mail to the Respondent. In terms of section 62 (4) of the Private Housing (Tenancies) (Scotland) Act 2016 there is an assumption that a tenant will receive a Notice to Leave 48 hours after it is sent. In this application that date would have been the 26<sup>th</sup> of January 2022. In terms of section 62(4) of the act the date to be entered in part 4 of the notice to leave as the earliest date when the landlord is able to apply to the tribunal is stated as follows :-

*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 anyother requirements prescribed bythe Scottish Ministers in regulations.

(2)In a case where two or more persons jointlyare 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.

7.In this application there is a six month notice period which expired on 26<sup>th</sup> July 2022.The date which should have been entered in part 4 of the Notice is 27<sup>th</sup> July 2022. The tribunal noted that the application had not been made to the tribunal until the 16th of August 2022 so no attempt had been made to rely on the notice before the correct date which should have been entered in part 4. In addition, the Tribunal had regard to Schedule one, paragraph 10 of the Coronavirus (Scotland) Act 2020 which introduced a provision in relation to errors in notices including Notices to Leave which had been completed without taking proper account of the changes in paragraphs 1 to 9 of the schedule and indicated that these notices remained valid subject to the provision of paragraph 10(1)(b) and 10(2). In terms of Regulation 4 of the Coronavirus Scotland Acts (Early Expiry of Provisions) Regulations 2022 which came into force on the 30th of March 2022, paragraph 10 of schedule 1 of the 2020 act expired but remains in force for Notices to Leave served before 30th March 2022. Mr Smith for the Applicant requested that the tribunal take note of the terms of paragraph 10 and find that the Notice to Leave was valid in relation to this application. The tribunal legal member explained the legal position to the Respondent who confirmed he understood but did not wish to take any issue with the Notice to Leave.

8. The tribunal members were satisfied having taken account of all of the terms of paragraph 10 of schedule 1 of the 2020 Act that the Notice to Leave was valid and the notice remained in force for the purpose of seeking an order for eviction in the application.

9. The tribunal members were satisfied that they had sufficient information upon which to make a decision and that the proceedings had been fair.

10. The Applicant is the owner of the leased property referred to in this application.

11. The parties entered into a private residential tenancy agreement at the property with effect from 14th July 2018.

12. The Applicant wishes to sell the let property due to a change in his circumstances to allow him to realise the value of this asset.

13. The Applicant intends to market the property for sale as soon as he has vacant possession and instructed letting agents to market the property for sale when vacant in January 2022.

14. The Applicant is entitled to sell the let property.

15. The Respondent lives at the property with his partner and two teenage children.

16. The Respondent does not object to an eviction order and has been trying to find alternative accommodation since July 2022.

17. The Applicant's agent sent a Notice to Leave to the Respondent by email on 24th January 2022. Having regard to paragraph 10 of schedule 1 of the (Coronavirus) Scotland Act 2020 and Regulation 4 of the Coronavirus Scotland Acts (Early Expiry of Provisions) Regulations 2022, the error in the date in part four of this notice does not affect its validity for use in this application and the Notice to Leave is valid.

18. Agents on behalf of the Applicant intimated a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 to West Lothian Council on 8th August 2022.

### **Reasons for Decision**

19. The tribunal was satisfied that the eviction ground was made out in this application having had sight of confirmation from letting agents who were instructed to market the property for sale when the Applicant obtained vacant possession. The Applicant had also submitted an e-mail confirming that he wished to sell the property. The date in part four of the notice to leave was a day too early, but the notice had not been relied on before the correct date or before the end of the notice period. The tribunal accepted that this error did not affect the validity of the Notice to Leave in this application, having noted that no issue was taken by the Respondent over the terms of the notice. The Respondent clearly indicated that he had no objection to the eviction order being granted and did not seek to argue that to grant such an order would be unreasonable. In all of the circumstances the tribunal considered that it was reasonable to grant an eviction order in this application.

### **Decision**

The Tribunal determined that an eviction order in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 be granted in that the landlord intends to sell the let property for market value or at least put it up for sale within three months of the tenant ceasing to occupy it and finds that it is reasonable to grant the order.

## 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.

V. Bremner

\_\_\_\_\_  
Legal Member/Chair

20.1.23  
\_\_\_\_\_  
Date