



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under**

Chamber Ref: FTS/HPC/EV/22/3668

Re: Property at 163 Strathaven Road, Stonehouse, Larkhall, ML9 3JN (“the Property”)

Parties:

**Ms Fiona Brown, 7 Ancaster Avenue, Chapel St Leonards, Skegness, PE24 5SL
 (“the Applicant”)**

**Mr Thomas McConnell, 163 Strathaven Road, Stonehouse, Larkhall, ML9 3JN
 (“the Respondent”)**

Tribunal Members:

Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 163 Strathaven Road, Stonehouse, Larkhall, ML9 3JN under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 6 October 2022, the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017 (“the Regulations”). The basis of the Application was that the Applicant required to sell the Property under Ground 1 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 24 July 2018 between the parties, a Notice to Leave dated 19 May 2022 with email to the Respondent of the same date, a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to South Lanarkshire Council dated 6 October 2022 and a contract of sale with Premier Properties dated 29 September 2022.
3. On 1 November 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 29 November 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 25 January 2023. The Respondent required to lodge written submissions by 20 December 2022. This paperwork was served on the Respondent by Andrew McLean, Sheriff Officer, Glasgow on 30 November 2022 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 25 January 2023 by way of teleconference. Miss Wooley from BKF solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 24 July 2018 between the parties, a Notice to Leave dated 19 May 2022 with email to the Respondent of the same date, a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to South Lanarkshire Council dated 6 October 2022 and a contract of sale with Premier Properties dated 29 September 2022. The Tribunal noted the terms of these documents.
7. Miss Wooley moved the Tribunal to grant an Order for repossession. She referred to the Private Residential Tenancy Agreement and to the Notice to Leave served on the Respondent on 19 May 2022. She submitted that Clause 4 of the tenancy agreement provided for service by way of email. The Notice to Leave relied on Ground 1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act and came into force on 14 August 2022. She also referred to the contract of sale with Premier Properties as vouching that the

Applicant intended to sell the Property. She submitted that Ground 1 had been met.

8. On reasonableness Miss Wooley submitted that her client had a portfolio of properties she wanted to sell to fund her retirement. When questioned by the Tribunal she stated she understood the Applicant had a portfolio of between 4-10 properties. This was the only property with a mortgage and with rising interest rates, it was no longer financially viable to continue to rent the Property as the associated costs exceeded the rent. The Applicant intended to sell all her properties. Miss Wooley further advised that the Respondent had contacted the Applicant's letting agent in December 2022 to advise he had secured a Council property and that he would be vacating the Property at the beginning of February 2023.
9. On being questioned by the Tribunal Miss Wooley advised that the Respondent was a single man who lived alone at the Property. She understood he was in employment. She was not aware of any health or disability issues. There had been no issues with the Respondent during the tenancy and re-iterated the only reason the Applicant wanted to sell the Property was to fund her retirement.

Findings in Fact

10. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 24 July 2018. In terms of Clause 4 parties agreed that all communication could be made by email.
11. The Applicant owns the Property. The Applicant intends to put the Property up for sale when she gains repossession of it to fund her retirement. The contract of sale dated 29 September 2022 with Premier Properties indicates they will deal with the sale and marketing of the Property.
12. The Applicant's letting agent served a Notice to Leave on the Respondent by way of email 19 May 2022. The Notice to Leave required the Applicant to leave the Property by 14 August 2022. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
13. The Respondent advised the Applicant's letting agent in December 2022 that he had secured a Council tenancy and would vacate the Property in February 2023. The Respondent remains in the Property.
14. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on South Lanarkshire Council on 6 October 2022.
15. The Respondent is a single man and lives alone.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support.
17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property and on Ground 12, namely rent arrears. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2).
20. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondent by on 19 May 2022. The Tribunal was accordingly satisfied the Notice to Leave was validly served on 19 May 2022.
21. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 14 August 2022. The application was made on 6 October 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 84 days. Accordingly, the Notice to Leave complies with Section 62.
22. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely Ground 1.
23. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the

submissions made by Miss Wooley. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Miss Wooley, that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as she regained possession.

24. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it to help fund her retirement. The Tribunal was satisfied on the basis of the submissions of Miss Wooley that the Respondent had advised the Applicant's letting agents he had secured a Council property and was intending to vacate the Property in February 2023. The Respondent was a single man who lived in the Property alone. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

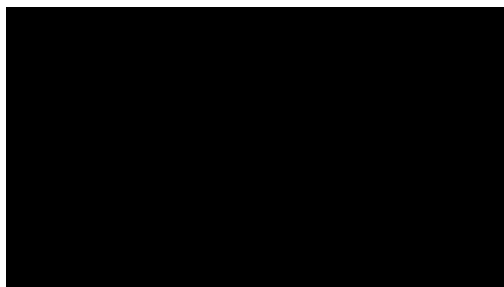
25. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

26. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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 Chair

25 January 2023

Date