



**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/22/3735**

**Re: Property at 63 Heather Gardens, Uddingston, G71 5DF (“the Property”)**

**Parties:**

**Mr Stephen Broadley, 6 Railway Road, Airdrie, ML6 9AB (“the Applicant”)**

**Miss Kirsty Hamilton, 63 Heather Gardens, Uddingston, G71 5DF (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

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

**Background**

On 8<sup>th</sup> October 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property using Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”)

Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement showing a commencement date of 26<sup>th</sup> April 2018 and a rent of £795 per month
2. Copy Notice to Leave dated 8<sup>th</sup> July 2022
3. Copy email to the Respondent dated 8<sup>th</sup> July 2022 attaching the Notice to Leave
4. Copy email from the Respondent acknowledging the Notice To Leave

5. Section 11 Notice
6. Email correspondence between the Applicant and Royal Bank of Scotland regarding refinancing

The Application was served on the Respondent by Sheriff Officers on 23rd February 2023.

On 23<sup>rd</sup> March 2023 the Respondent's representative lodged a short written submission on her behalf.

### **Case Management Discussion**

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mrs Marilyn Kent of SBC Properties. The Respondent was represented by Mr Law of Hamilton Citizens Advice Bureau.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Mrs Kent sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She said that the Applicant was being pressured by his bank, Royal Bank of Scotland to sell the property to pay off a loan. She said that the bank required him to pay off the loan by 18<sup>th</sup> March 2023, but that they were coming and going with him due to the Tribunal proceedings. She said that she had produced a letter to the Tribunal last year from the bank and had emailed in a further letter to the Tribunal on the day of the CMD. She said that no solicitors had been involved so far as they did not have an order allowing them to sell the property.

As far as reasonableness is concerned Mrs Kent said that the situation was causing the Applicant anxiety and stress as he has the loan to repay. He has looked at selling with a sitting tenant but has been advised by estate agents that this would reduce the sale price. She said that the bank are forcing the Applicant's hand.

Mr Law for the Respondent said that it was not reasonable to grant the order. He said that the Respondent suffered from anxiety and depression. She has three children, two of whom are dependent. One of the children, aged 14, suffers from Alice In Wonderland Syndrome meaning they have a difficulty with spatial perception. The respondent has been advised by the Housing department not to go down the homeless route as she could be placed anywhere, and it would be better for the child if there was a planned move to suitable accommodation.

Mr Law said that the Applicant had not established that it was not viable to attempt to sell the property with a sitting tenant. He also said that the ground of eviction had not been met.

Mrs Kent confirmed that the Applicant owned about 20 properties and was selling around 10 of them.

The Tribunal decided that the matter required to proceed to a Hearing.

The issues in dispute are both the ground and reasonableness.

Issues to be explored include the Applicant's position with his bank, the Applicant's anxiety at the situation, whether the property can be sold with a sitting tenant, the Applicant's other rental properties, the Respondent's anxiety and depression, the medical condition of the Respondent's child and the effect of relocation on that condition.

It was agreed by both parties that a Hearing by teleconference would be the most suitable method.

On 18<sup>th</sup> May 2023 the Applicant's agent lodged a copy of a letter from the Royal Bank of Scotland plc dated 16<sup>th</sup> May 2023 which stated that the loans were not secured on individual properties but over the whole portfolio and that the bank could not express a view as to which properties should be sold or in relation to the urgency of the sale of each of the properties.

## **Hearing**

The Hearing took place by teleconference on 9<sup>th</sup> June 2023. Mrs Kent again appeared for the Applicant, and Mr Law for the Respondent. Both confirmed that they did not have any witnesses to call. Mrs Kent explained that the Applicant was abroad and 7 hours behind and would not be dialling in.

The Chairperson asked each party if they had any preliminary matters to raise and they both confirmed that they did not.

The Chairperson confirmed with Mrs Kent the documents that she would be referring to.

Mr Law explained that he had no documents or witnesses. He said that agreement had been reached between the parties the previous day that the Respondent would consent to the order being granted on the basis that it would not be issued for two months. This was to give the Respondent time to be rehoused and move out.

Mrs Kent confirmed that agreement had been reached yesterday but that the Applicant had changed his mind overnight as he was under pressure from the bank.

The Tribunal explained to Mrs Kent that it was not good practice to renege on an agreement, and that, even if the Tribunal did decide to grant an order, it would not be issued for at least a month in any event, with the possibility of the respondent lodging and appeal. The Tribunal also explained that after hearing the parties it might decide not to grant an order at all. The Tribunal adjourned for fifteen minutes to allow Mrs Kent to seek the Applicant's further instructions.

The Tribunal reconvened. Mrs Kent said that she had spoken to the Applicant, but he had not changed his mind. She read out a statement from him which said that he did not have the luxury of time and needed the property back as soon as possible.

The Chairperson asked Mr Law if he was seeking an adjournment on the basis that the Respondent was not available to give evidence today as she had been under the impression that the matter was settled. Mr Law said that he had considered that, but it would only cause further delay and the Respondent needed the order to be granted so that she could be rehoused.

The Tribunal considered the matter and decided to grant the order for eviction and suspend its issue for a period of two months on the basis that the parties had reached agreement to that effect the previous day and it was reasonable in all the circumstances previously given to the Tribunal to give the respondent two months to vacate.

The Tribunal did not consider it necessary to make Findings in Fact as the Order is in implementation of an agreement between the parties.

### **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.**

# A. Kelly

09/06/2023

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**Legal Member/Chair**

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**Date**