



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/4284**

**Re: Property at 49 Fallas Place, Fauldhouse, Bathgate, EH47 9BZ (“the Property”)**

**Parties:**

**Mr Paul Watson, 10 Gorsewood, Bishopbriggs, Glasgow, G64 2TG (“the Applicant”)**

**Mr Craig Williams, 49 Fallas Place, Fauldhouse, Bathgate, EH47 9BZ (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. The application submitted by the Applicant sought an order of eviction under ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the Act”)
2. Prior to a case management discussion which was held on 4<sup>th</sup> April 2023, the Applicant sought to amend his application to allow inclusion of grounds 1 and 12A of Schedule 3 of the Act.
3. The Tribunal members dealing with the case management discussion on 4<sup>th</sup> April 2023 dealt with ground 12A and determined that this would not be a valid ground

since, at the date of the notice to leave, the cumulative total of rent arrears had not been equivalent to or in excess of six months' arrears.

4. The case management discussion of 4<sup>th</sup> April 2023 had been adjourned to allow the Applicant to submit a request to the Tribunal to allow the application to be amended to include ground 1A of Schedule 3 of the Act and to provide evidence that he intended to sell the Property to alleviate his financial hardship.
5. Subsequent to the case management discussion on 4<sup>th</sup> April 2023, the Applicant had requested leave to amend the application to include ground 1A of Schedule 3 of the Act. The Applicant had also submitted various redacted documents.

### **Case Management Discussion of 10<sup>th</sup> May 2023**

6. A case management discussion was held on 10<sup>th</sup> May 2023 by teleconferencing.
7. The Applicant was present.
8. The Respondent was not present and the tribunal was satisfied that he had been given intimation of the arrangements for the case management discussion and the request of the Applicant to amend the grounds under which an order of eviction was sought.
9. The legal member set out the purpose of a case management discussion.
10. The tribunal granted the Applicant's request that the grounds of eviction be amended to be under grounds 1A and 12 of Schedule 3 of the Act.
11. The Respondent had failed to engage with the Tribunal process on two occasions. Taking that into account and the fact that the Applicant had provided sufficient information for the application to be determined, the tribunal decided that it would not require to fix a Hearing.

### **The Law**

12. Private Housing (Tenancies) (Scotland) Act 2016

Section 51

*First-tier Tribunal's power to issue an eviction order*

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

### Schedule 3

*1A (1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.*

*(2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—*

*(a) the landlord—*

*(i) is entitled to sell the let property,*

*(ii) is suffering financial hardship, and*

*(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*

*(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) (a) (iii) includes (for example)—*

*(a) a letter of advice from an approved money advisor or a local authority debt advice service,*

*(b) a letter of advice from an independent financial advisor,*

*(c) a letter of advice from a chartered accountant,*

*(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(e) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market, and*

*(f) an affidavit stating that the landlord has that intention.*

12 (1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

(2).....

(3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

(a) *for three or more consecutive months the tenant has been in arrears of rent, and*

(b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

(4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

(a) *whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit , and*

(b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

(5) *For the purposes of this paragraph—*

(a) *references to a relevant benefit are to—*

(i) *a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

(ii) *a payment on account awarded under regulation 91 of those Regulations,*

(iii) *universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

(iv) *sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

(b) *references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

(6) *Regulations under sub-paragraph (4)(b) may make provision about—*

(a) *information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*

(b) *steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

*(c) such other matters as the Scottish Ministers consider appropriate.*

13. The tribunal indicated that it required to establish if the grounds for eviction stated in the application were met. Thereafter it had to decide if it was reasonable to grant the order of eviction.

#### 14. Findings in Fact

14.1 Parties entered into a private residential tenancy agreement for the Property which commenced on 9<sup>th</sup> October 2020.

14.2 The contractual rent is £525 monthly.

14.3 The Applicant served a notice to leave on the Respondent requiring him to vacate by 19<sup>th</sup> August 2022.

14.4 The Respondent still occupies the Property.

14.5 West Lothian Council was served with the appropriate notice in terms of the Homelessness etc (Scotland) Act 2003.

14.6 The Respondent resides in the Property on his own.

14.7 The Applicant has instructed a firm of estate agents to market the Property.

14.8 The Applicant has a portfolio of nine rental properties.

14.9 The Applicant did not make a profit from his letting business for the year ended 5<sup>th</sup> April 2022.

14.10 The Applicant has borrowed £14,000 from a credit card company and £10,000 from his father which he requires to repay.

#### 15. Findings in Fact and Law

15.1 The Applicant intends to sell the Property to alleviate financial hardship.

15.2 The respondent is in arrears of rent for three or more consecutive months.

#### Reasons

16. The tribunal noted the terms of a letter Newman Properties to the Applicant dated 21<sup>st</sup> February 2023 which confirms that they have been instructed to market the Property when it is vacant.

17. The tribunal noted the terms of the Title Sheet WLN2605 which discloses that the Property is owned by the Applicant and another. The Applicant said that the Property had been purchased by he and his wife and that, following his wife's death, has been owned by him alone.

18. The Applicant said that he intended to sell the Property as soon as he had recovered possession.
19. The tribunal had no difficulty in accepting that the Applicant is entitled to sell the Property and accepted his evidence that he intended to do so.
20. The Applicant had produced a rent statement with the application which disclosed the respondent had been in arrears of rent for a period in excess of three months. The Applicant said that the current level of arrears is £4,425.
21. The Applicant said that he had attempted to engage with the Respondent to assist him with coming to an arrangement to pay the rent arrears. He said that he had referred him to West Lothian Council which had a scheme to assist tenants facing difficulties in paying rent. He said that, with the Respondent, he had set up a payment plan but that this had fallen down because the Respondent had not kept up payments. The Applicant said that the last payment of rent had been received on 11<sup>th</sup> December 2022.
22. The tribunal accepted that ground 12 of Schedule 3 of the Act had been met.
23. The Applicant spoke about his business. He said that he has a rental portfolio of nine properties. Two are in England and are managed by a letting agent. He said that one of the Scottish properties is empty after the tenant abandoned it and that it will shortly be put on the market once it has been cleared and made ready for sale. He said that he anticipated that this would be within a few weeks.
24. The Applicant said that the original intention of he and his wife had been to hold the properties which could then be used to support them in retirement. All the properties have interest only mortgages. The Applicant said that he now intends to sell properties as they become vacant.
25. The Applicant said that his financial position had deteriorated owing to a combination of factors. Interest rates had increased, he had not increased rents, is now unable to do so in any meaningful way and, when remortgaging properties to extend terms, he has been hit by changed lending criteria affecting the loan to value ratio of the mortgages. He referred the tribunal to a letter from his solicitor dated 16<sup>th</sup> February 2023 with regard to the remortgage of a property in Shotts. The letter disclosed that there had been a shortfall on what had to be paid in respect of the existing mortgage product and the new mortgage. The letter shows that the shortfall amounted to £8,300.
26. The Applicant said that, to alleviate his financial situation, he had borrowed money. He referred the tribunal to documentation which disclosed a loan from a credit card company of £14,000 and a letter from his father dated 7<sup>th</sup> April 2023

which referred to provision of a loan to the Applicant of £10000 which had been provided in March 2023. He also referred to loans which he had taken from other family members.

27. Mr Watson said that he is making only the minimum monthly payment in respect of the loan on his credit card and he said that this was in the region of £141. He said that he is anxious to repay the credit card debt and also the loan to his father.
28. The Applicant said that the borrowed money was for day to day living but also included the shortfall on the remortgage as well as paying for repairs required to his rental properties.
29. The Applicant said that sale of the Property would assist in repayment of his debt. He said that the outstanding mortgage on it is in the region of £59000 and that the sale price achieved would depend on its condition when he recovers it. He said that he hopes to sell the Property for somewhere in the region of £75000.
30. The Applicant said that the monthly mortgage for the Property is in the region of £182. He said that the gas maintenance contract cost £31 per month and that he also had annual insurance costs in the region of £250. He said that he also has responsibility to ensure that the Property is properly maintained.
31. The Applicant referred the tribunal to the redacted business accounts for the year ended 5<sup>th</sup> April 2023. He said that, rather than a profit, the accounts show a loss on trading.
32. Mr Watson said that he has no employment other than his rental business. He said that he receives widowed parent's allowance and tax credits and that his income from these amounts is just over £330 per week. His daughter is of school age and lives with him.
33. The Applicant says that he owns the house which he lives in and had considered selling it to alleviate the financial position he is in. He said that he had decided that it would not be appropriate given the age of his daughter and a particular matter regarding his daughter which, because of concerns for privacy, the tribunal has not detailed here. He said that, if he sold the family home, he would require to find alternative accommodation.
34. The Applicant said that he had no savings or investments.
35. The Applicant said that sale of the Property would not only release capital to repay debt but would also reduce his outgoings. He said that he had no income

from the Property since no rent had been paid since December 2022 but that he did have to pay out money in respect of the Property.

36. The Applicant said that he “was at his wits’ end” and that his financial situation was affecting his health. He described his current circumstances as “the worst period of his life.”

37. The tribunal accepted that the Applicant was credible in stating that he required to sell the Property to alleviate financial hardship. It accepted the evidence which had been produced with regard to his financial position.

38. The Applicant said that, as far as he knew, the Respondent lives in the Property on his own and is in employment.

#### Discussion

39. The tribunal considered whether or not the necessary grounds for eviction had been met. It determined that grounds 1A and 12 of Schedule 3 of the 2016 Act had been met.

40. On the balance of probabilities, the tribunal determined that the Applicant intended to market the Property to alleviate financial hardship.

41. The tribunal accepted that the Respondent had been in arrears of rent for a period of three or more consecutive months.

42. The tribunal required to carry out a balancing and weighing exercise to determine whether or not it was reasonable to grant the order of eviction.

43. There was not much information on the Respondent’s circumstances other than what had been provided by the Applicant. The Respondent had been advised of two case management discussions and had not attended or made written representations.

44. It appeared to the tribunal that it was reasonable for the Applicant to recover the Property to sell it. Not only would this release capital but it would also reduce the Applicant’s outgoings in respect of the Property set against a situation where he was receiving no income from it.

45. The tribunal, having weighed matters, considered that it was reasonable to grant the order of eviction.

#### 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.**



**Martin J. McAllister  
Legal Member  
11<sup>th</sup> May 2023**