



**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/23/0478**

**Re: Property at 49 John Wilson Drive, Glasgow, G65 9AT (“the Property”)**

**Parties:**

**Haaris Property Ltd, 199 Maryhill Road, Glasgow, G20 7XJ (“the Applicant”)**

**Ms Susanne Muenz, 49 John Wilson Drive, Glasgow, G65 9AT (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.**

**Background**

1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Private Residential Tenancy Agreement between the parties dated 3 February 2022;
- (ii) Notice to Leave dated 23 September 2022 with proof of delivery by recorded delivery mail;
- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council;

- (iv) Email from Respondent confirming receipt of Notice to Leave; and
  - (v) Estimate of refurbishment costs from A&S Properties.
- 2 By Notice of Acceptance of Application dated 5 May 2023 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 1 September 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was served on the Respondent by Sheriff Officers.
  - 3 The Tribunal subsequently received a letter dated 16<sup>th</sup> August 2023 from Coatbridge Citizens Advice Bureau (“CCAB”) on behalf of the Respondent. The CCAB advised that they would not be representing the Respondent before the Tribunal but had asked her to pass the letter to the Tribunal and the Applicant. The CCAB advised that the Respondent was vulnerable, having lost her partner in November 2022, and suffered from health issues. She had a carer who did not live locally and she wished to move to be closer to her carer and friends. She had applied for local authority housing and had been highly placed, but it was unclear when she would receive an offer of accommodation. In light of the protection offered by the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) the Respondent did not object to the granting of an eviction order. She hoped to be in a position to terminate her tenancy within six months. CCAB confirmed that the Respondent would not be attending the Case Management Discussion.

### **Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 1 September 2023. The Applicant was represented by their representative Mr Naveed Younas. The Respondent was not in attendance. The Tribunal noted that she had been served with the application paperwork together with the date and time of the Case Management Discussion. The Tribunal further noted the terms of the letter from the CCAB which stated that she would not be attending the Case Management Discussion. On that basis the Tribunal determined to continue in the Respondent’s absence.
- 5 The Tribunal explained the purpose of the Case Management Discussion and the legal test to be applied under ground 3 of Schedule 3 of the 2016 Act.
- 6 Mr Younas addressed the Tribunal. He explained that the Applicant sought an eviction order in order to refurbish the property. An Electrical Installation Condition Report (“EICR”) had been carried out in 2021 and confirmed that the property would require a full rewire after the expiry of the three year period of the EICR. The Applicant had therefore submitted the application in good time to obtain possession of the property. The rewire would be disruptive, with no

access to electricity, heating or hot water. All of the flooring would require to be uplifted. Mr Younas explained that once the rewiring was completed the property would require to be decorated and then a new kitchen and bathroom installed. He estimated that the rewiring would take approximately three weeks. It would take around two to three months for the entirety of the works to be completed. Mr Younas advised that the Applicant was not certain on their plans for the property thereafter. They may sell or they may seek to re-let. Mr Younas confirmed that due to the expiry of the EICR it would not be possible to let the property again until the works were done, as it would not be compliant and habitable. Mr Younas advised that he had spoken with the Respondent by telephone and she had told him that she had applied to the Council for somewhere else to live.

## **Relevant Legislation**

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

### ***1 - Meaning of private residential tenancy***

*1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

### ***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.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the tenant has a relevant conviction, [ground 13]*
  - (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*
  - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*
  - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) the eviction ground mentioned in subsection (3), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a)*
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
  - (b) that the tenant has a relevant conviction, [ground 13]*
  - (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
  - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*
- (3C) This subsection applies if—*
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **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 any other requirements prescribed by the Scottish Ministers in regulations.

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

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

## **Schedule 3, Part 3**

### **Landlord intends to refurbish**

3(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2) The First-tier Tribunal may find that the eviction ground named by subparagraph (1) applies if—

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

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

*(a) any planning permission which the intended refurbishment would require,*  
*(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.*

- 8 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application, as is the Cost of Living (Tenant Protection) (Scotland) Act 2022.

### **Findings in Fact**

- 9 The parties entered into a Private Residential Tenancy Agreement dated 3 February 2022. The tenancy was a joint tenancy between the Applicant, the Respondent and the joint tenant Carmen Rochel. Ms Rochel passed away in November 2022.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 On 23 September 2022 the Applicant delivered a Notice to Leave to the Respondent. The Notice to Leave cited ground 3 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 December 2022.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 The Applicant intends to refurbish the property. In particular the Applicant intends on carrying out a full rewiring of the property.
- 14 The Applicant is entitled to refurbish the property.
- 15 The refurbishment works will involve lifting all floorboards throughout the property and removing and replacing the kitchen and bathroom.
- 16 It would be impracticable for the Respondent to continue to occupy the property whilst the works are being carried out.
- 17 The Respondent resides in the property alone. The Respondent is vulnerable and suffers from health issues.
- 18 The Respondent wishes to vacate the property in order to move closer to her carer and friends.

- 19 The Respondent has applied for accommodation with the local authority.
- 20 The Respondent does not object to the granting of the order sought by the Applicant.

### **Reasons for Decision**

- 21 The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that it would not be prejudicial to the interests of the parties. The Respondent had confirmed that she was not opposing the application. Accordingly there were no issues to be resolved that would require a hearing to be fixed.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 3 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondents and therefore that application could be entertained.
- 23 Based on its findings in fact, the Tribunal was satisfied that the Applicant intended to refurbish the let property. This was supported by the estimate of costs for the works that had been submitted with the application and the verbal submissions from Mr Younas at the Case Management Discussion. The Tribunal had been provided with a copy of the land certificate for the property which confirmed the Applicant as the registered owner and therefore the Applicant was entitled to carry out the works. The Tribunal was further satisfied that based on the nature of the works that were planned it would not be practicable for the Respondent to remain in the property.
- 24 The Tribunal therefore considered the question of reasonableness. The Tribunal placed significant weight on the fact that the Respondent did not object to the application, and had applied for housing with the local authority. She did not wish to remain in the area and was actively seeking alternative accommodation. The Tribunal noted that she had been highly placed on the housing list and therefore would have good prospects of being rehoused. The Tribunal further noted the impact of the 2022 Act which would give her a period of six months to remove from the property. CCAB had confirmed in their correspondence that she was content with this. It was clear from the Applicant's submissions that the property required an extensive refurbishment, and if the Applicant was not in a position to complete the rewiring prior to the expiry of the EICR it could pose a hazard to occupants. The Tribunal therefore accepted that the refurbishment was necessary. Accordingly having weighed up the particular facts and circumstances of this case the Tribunal was ultimately satisfied that an eviction order was reasonable.
- 25 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.**

**Ruth O'Hare**

**1 September 2023**

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

\_\_\_\_\_  
**Date**