



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/0843

Re: Property at 7 Balmerino Place, Cupar, Fife, KY15 4DN (“the Property”)

Parties:

Mr Steven Simpson, residing at Rose Cottage, Old Mill Road, Craigrothie, KY15 5PZ (“the Applicant”)

Miss Clare Miller, residing at 7 Balmerino Place, Cupar, Fife, KY15 4DN (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

1. This is an Application for an eviction order in regard to a Private Residential Tenancy (“PRT”) and is considered in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (“the Rules”). The PRT is between the Parties and relates to the Property.
2. The Application was dated 13th March 2023. This makes the Application subject to the Cost of Living (Respondent Protection) (Scotland) Act 2022.
3. The application relies upon a Notice to Leave dated 11th October 2022, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent on 11th October 2022, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in that “the Applicant intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 13th February 2023.
4. The Application papers confirmed that the Applicant (and other joint owners of the property) wished to sell the Property to release funds to allow a member of the Applicant’s family to

purchase an alternative home for himself and his family. The Applicant had included with the application a letter from Thorntons Solicitors which confirmed that they had been instructed to deal with the sale of the Property.

5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Fife Council was included in the Application papers.
6. The Respondent did not lodge any written submissions in advance of the CMD.

The Hearing

7. The matter called for a CMD of the First-tier Tribunal for Scotland, Housing and Property Chamber, conducted by remote telephone conference call, on 29th September 2023. The Tribunal were addressed by the Applicant's representative, Mrs. Alice Simpson, and by the Respondent.
8. At the CMD, Mrs Simpson confirmed that the application for eviction was insisted upon. She explained that the Applicant wished to sell the property to release funds to allow a member of his family to buy their own alternative accommodation. It was explained that the family member concerned was currently living with his partner and child in accommodation in Dundee which was not considered to be safe or desirable to live in due to anti-social behaviour and other concerning and unsafe activity within the vicinity of his current property. Mrs Simpson confirmed that she understood the impact of the Cost of Living (Tenant Protection) legislation and that any order granted by the Tribunal would be suspended for up to 6 months. She was sympathetic to the Respondent's position and offered to support the Respondent in finding alternative accommodation.
9. The Respondent confirmed to the Tribunal that she accepted that the Applicant had a genuine intention to sell the Property. She confirmed to the Tribunal that she did not wish to oppose the application. She had taken advice from a local CAB and from a local housing support and advice agency. She explained that she is on a local authority waiting list for alternative housing. She had been advised that the local authority was unlikely to treat her application as a priority unless there was an order that required her to remove from the Property. The Respondent has a disability and hopes to secure alternative housing which can be occupied by both the Respondent and her eighteen-year-old daughter (who currently resides with other family members).

Findings in Fact and Law

10. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 1st August 2020 ("the Tenancy").
11. The Applicant has issued a Notice to Leave dated 11th October 2022 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent has received that notice.
12. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 31st January 2023.

13. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served by the Applicant upon Fife Council.
14. The Applicant (and other co-owners of the Property) are entitled to sell the let property and they intend to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the property.
15. It is reasonable to issue an eviction order.

Reasons for Decision

16. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
17. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having heard evidence from the parties and having considered the written representations lodged. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.
18. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) ...the Applicant intends to sell the let property.
 - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the Applicant-
 - (a) is entitled to sell the let property,
 - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it, and
 - (c) 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 Applicant has the intention mentioned in sub-paragraph (2)(b) includes (for example)-
 - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
 - (b) 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.
19. The Tribunal were satisfied, on the uncontested evidence provided, that the Applicant is entitled to sell the let property and that he intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the property. On that basis the Tribunal agreed that paragraphs (2)(a) and (b) were satisfied.
20. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph (2)(c).

21. The Applicant wishes to sell the Property to release funds to allow a member of his family to purchase his own property. The Respondent does not wish to oppose the application as she considers an order which requires her to vacate the Property will support her own application for alternative accommodation with the local authority.
22. In determining whether it is reasonable to grant an eviction order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
23. In considering whether it was reasonable to grant the eviction order the Tribunal considered that a prima facie case in respect of reasonableness had been made out on behalf of the Applicant.
24. The Respondent does not oppose the application and does not argue that it would be unreasonable to grant the order.
25. In all of the circumstances the Tribunal considered it reasonable to grant the order sought.
26. The order granted by the Tribunal will be subject to the Cost of Living (Tenant Protection (Scotland) Act 2022) which may suspend enforcement of the eviction order for the period of six months.

Decision

In all of the circumstances the Tribunal grant an order against the Respondent for eviction from the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, further to Ground 1 of Schedule 3 of that Act, and we direct that the order should not be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.



**Andrew Cowan
Legal Member/Chair**

**29th September 2023
Date**