



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/23/1598

Re: Property at 45 Kerr Crescent, Hamilton, ML3 8JT (“the Property”)

Parties:

Mr Donald Mackay, 14 Turnpike Road, Blackwood, ML11 9YD (“the Applicant”)

Mr John Lavery, 45 Kerr Crescent, Hamilton, ML3 8JT (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- **Background**
 1. An application dated 17 May 2023 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- **Case Management Discussion**
 2. A Case Management Discussion (“CMD”) took place on 14 August 2023 by conference call. The Applicant was represented by Ms Donnelly of TC Young Solicitors. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the application had been intimated on the

Respondent by way of Sheriff Officer on 7 July 2023 and accordingly the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 15 November 2018. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 2 February 2023. There had been no contact from the Respondent since then and he was still believed to be residing within the Property.
4. The Applicant's representative submitted that the Respondent has failed to pay rent since August 2022. The Applicant's mortgage over the Property has increased from £124 per month to £327 per month. The Applicant is using his own personal savings to meet the mortgage and now needs to sell. The Applicant has previously been awarded a Payment Order against the Respondent for non-payment of rent, in June 2023. The Respondent did not participate in those proceedings. The Applicant's representative submitted that the Respondent is believed to be aged around 40 years old and is believed to be in employment. The Applicant had previously indicated to the Respondent that he intended to sell, in order to give the Respondent an opportunity to purchase if he wished to do so, but there has been no response. The Applicant's agent has been approached by another agent seeking a landlord's reference following the Respondent applying for a property to let with them. The other agent confirmed that they had obtained a reference from the Respondent's employer. The Applicant's representative submitted that the Applicant is not aware of anyone else residing in the Property nor of any dependants.
5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave by email
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Home Report
- Findings in Fact
6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 15 November 2018;
 - (ii) The Applicant is the heritable proprietor of the Property;
 - (iii) The Applicant is entitled to sell the Property;

- (iv) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (v) The Applicant has provided a Home Report for the Property.

- Reasons for Decision

7. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to sell the property and intends to do so within 3 months of the Respondent ceasing to occupy it. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.
8. The Tribunal was satisfied that it was reasonable to grant the order, in all the circumstances. The Respondent has failed to participate in these proceedings and in previous proceedings raised by the Applicant seeking a payment order for the rent arrears accrued. The Respondent has been given an opportunity to purchase the Property if he wishes to do so, and has failed to respond. The Applicant is receiving no rental income from the Property, despite the Respondent appearing to be in employment, and is having to meet ongoing (and increased) mortgage payments from his own savings. There is no evidence of any other occupiers or dependants in the household.

- Decision

9. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair:

Date: 14 August 2023