



**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/22/1574**

**Re: Property at 75 Mariners View, Adrossan, KA22 8BH (“the Property”)**

**Parties:**

**Mrs Mary Cairns, 5 Longcraigs Avenue, Ardrossan, KA22 7PU (“the Applicant”)**

**Mrs Sinead Smith or Johnstone and Mr Robert Johnstone, 75 Mariners View, Adrossan, KA22 8BH (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and issued an Eviction Order against the Respondents.**

**Background**

By application, received on 24 May 2022, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 2 February 2018 at a rent of £500 per month, and a Notice to Leave, dated 17 November 2021, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 19 May 2022.

On 4 October 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 25 October 2022. The Respondents did not make any written representations to the Tribunal.

## **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 8 November 2022. The Applicant was present and was represented by her daughter, Mrs Andrea Dunn. The Respondents were both present, Miss Smith now being Mrs Johnstone. The Tribunal asked the Applicant's representative what evidence she intended to lead to support the statement in the application that the Applicant intends to sell the Property and to set out for the Tribunal her argument as to why it would be reasonable to issue an Eviction Order. Mrs Dunn told the Tribunal that, following the death of the Applicant's husband, the Applicant's sole source of income, apart from the rent from the Property, was her State Pension. When factoring and repair costs to the Property were taken into account, she was in financial difficulties, and her daughter and son-in-law were having to help the Applicant meet the costs of any repairs to her own home. The Applicant does not own any other rental properties.

The Respondent, Mrs Johnstone, told the Tribunal that her husband's 16-year-old son, who is still at school, lives with them for half of the week, as part of a joint custody arrangement. They have no other dependants living with them. The local authority had told them that they were low priority for rehousing and they had tried, unsuccessfully, to obtain another private rented property, recognising the Applicant's desire to sell. They had been offered and had accepted a new house from Cunninghame Housing Association. Initially, it was to be completed by 30 November, but they had now been told it would be 18 January, and that date could also slide. They had nowhere else to go for the interim period. Mr Johnstone's son could not be expected to share a bedroom with the Respondents. They would vacate the Property as soon as they had the keys for their new house. The Respondents completely accepted the Applicant's reason for selling and wanted to give the Property back as soon as they could.

Mrs Dunn was concerned that the date of 18<sup>th</sup> January might come and go and make the Applicant's financial position more precarious. She had not yet instructed a Home Report, but, subject to freshening-up the Property as required, she had a local firm of solicitor estate agents lined up to market it whenever vacant possession was obtained. The Applicant is 76 and the process of having to apply to the Tribunal had been very stressful for her.

## **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must

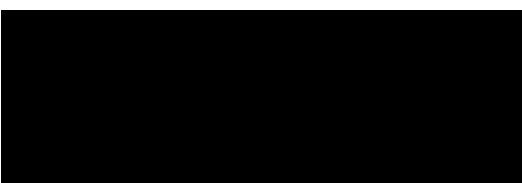
find that Ground 1 applies if the landlord is entitled to sell and intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal was satisfied that the requirements of Ground 1 in respect of service of the Notice to Leave had been complied with and that the Applicant intends to sell the Property. This was accepted by the Respondents. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of that fact.

The Tribunal noted that the Respondents want to move out and have secured another house, the only issue being the uncertainty of the date on which they will receive the keys. At present, that date appears to be 18 January 2023. The Tribunal also accepted that the Applicant's stated financial position would continue to worsen until the Property could be sold, but her daughter had indicated that she was receiving some financial assistance from her and her husband. The task for the Tribunal was to balance the interests of the Parties in order to decide the matter of reasonableness. Having considered carefully all the written and oral evidence before it, the Tribunal's view was that it was reasonable to issue an Eviction Order, but that it should not be enforceable until at least 18 January 2023 and, recognising the possibility of further slippage in the completion date for the Respondents' new house, decided that it should not be enforceable before 31 January 2023. The Tribunal felt that this was a fair balance of the interests of the Parties. The Applicant had the certainty of a date on which she could expect to have vacant possession and could plan accordingly. The earliest date, allowing for the statutory appeal period, on which the Order could have been enforced would have been mid-December, and the Tribunal did not think it an unfair imposition on the Applicant to push that date back by six weeks. If, by 31 January 2023, the Respondents still did not have the keys to their new house, it was not unreasonable to expect them then to make arrangements for temporary accommodation.

### **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.**



**Legal Member/Chair**

**8 November 2022**  
**Date**