

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/22/3428

**Re: 42 School Street, Chapelhall, Airdrie, ML6 8UH
 (“the Property”)**

Parties:

**Miss Lorraine Cassidy and Mr Terence Nash, both of 25 Killearn Crescent, Plains, Airdrie, ML6 7UN
 (“the Applicants”)**

**Miss Ashley Davidson (formerly known as Mrs Ashley McPherson), 42 School Street, Chapelhall, Airdrie, ML6 8UH
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Sandra Brydon (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/3428 took place at 2pm on 13 February 2023 by teleconference call (“the **CMD**”). Miss Lorraine Cassidy of the Applicants and the Respondent were both present at the CMD. clerk to the Tribunal was Leah Graham.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. The Applicants made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was

made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application was dated 17 September 2022 and was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicants and the Respondent, together with execution pages, dated 4 May 2019 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 19 June 2022 from the Applicants, addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that the eviction ground was that “Your Landlord intends to sell the Let Property” and that an application would not be submitted to the Tribunal for an eviction order before 12 September 2022.
 - c. a covering letter dated 19 June 2022 from one of the Applicants addressed to the Respondent stating that it enclosed a notice to leave and that it was being “Delivered by hand” – clause 3 of the Tenancy Agreement stated that any notice was to be delivered in writing using “hard copy by personal delivery or recorded delivery”.
 - d. copy (unsigned) letter from Jewel Homes Ltd addressed to one of the Applicants dated 15 September 2022 thanking her “for instructing Jewel Homes to sell” the Property.
 - e. the required notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 17 September 2022 sending it to the local authority.
4. A notice of acceptance of the application was issued dated 14 December 2022 under rule 9 of the HPC Rules.
5. The Tribunal had been provided with a certificate of intimation issued by Andrew Mclean (sheriff officer) of Walker Love, which certified that the paperwork from the Tribunal (including notification of the date, time and dial-in details for the case management discussion) had been served personally on the Respondent on 29 December 2022.
6. The possession/eviction ground stated in the application form was ground 1 (*Landlord intends to sell*) of schedule 3 to the 2016 Act. The Applicants stated that “*We are approaching retirement age and are intending on selling the Property to use the funds to repay the mortgage on our principal residence. We intend to engage, On The Move estate agents, to market the Property upon vacant possession.*”
7. The Respondent had not provided written representations but attended the CMD.

8. The Tribunal noted that the Applicants were the registered landlords of the Property.
9. The Tribunal also noted that the Applicants were the registered proprietors of the Property (title number LAN202035).
10. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

11. The Respondent confirmed that she had received the notice to leave and had provided a copy to the local authority when they re-opened after the weekend on Monday 20 June 2022.
12. The Respondent confirmed that she had no objection to the issue of an eviction order and understood that, if an eviction order was granted, she would be required to leave the Property within a few weeks.
13. Miss Cassidy submitted that it would be reasonable for the Tribunal to grant an eviction order.
14. Miss Cassidy explained that the eviction order was being sought because she and the other Applicant wished to sell the Property. She explained that she and the other Applicant had previously resided in the Property and that the borrowing for their current residence and the Property had been consolidated, such that technically there was no mortgage in respect of the Property and that the remaining borrowings were secured against their current residence. She noted that the other Applicant intended to retire within the next year and so they were getting organised now because they wanted to sell the Property in order to pay off their mortgage.
15. Miss Cassidy explained that an estate agent had been appointed (a copy of the letter having been provided with the application paperwork) but that nothing further had been done in order to progress the sale because she and the other Applicant did not consider it appropriate to put it on the market while the Respondent was still in occupation. Miss Cassidy confirmed that she was aware that there were implications for wrongful termination if misleading information was provided and confirmed that the intention was to sell the Property after renovation works had been completed (which she estimated were likely to take 2-3 weeks, subject to the extent of water damage in the bathroom and remedial works being established). She noted that repairs were required and that the Applicants would not have the money to undertake the ongoing maintenance and the other Applicant was getting too old to do the work himself.
16. The Respondent explained that she had been on the local authority list for housing for a number of years but that she had not received an offer of suitable accommodation. She indicated that she would be treated as a higher priority if an eviction order was granted.
17. The Respondent explained that she had her three children living with her, all aged 14 or under, and that she was pregnant and due to give birth in March 2023. She

noted that she currently did not have anywhere else to live but considered that it would be “beneficial” to her for an eviction order to be granted because the local authority would not act without it and she would rather be settled somewhere else for the new baby arriving. The Respondent stated that there were issues with the Property including black spores, woodlice and slugs, which rendered the Property not suitable to live in in its current state. She indicated that the Applicants were not willing to do the necessary repairs until the Property was vacant.

FINDING IN FACT

18. The recollections of Miss Cassidy and the Respondent varied as to whether the notice to leave was handed over in person by Miss Cassidy to the Respondent or posted through the letterbox of the Property, but it was common ground that the Respondent had received the notice to leave no later than 19 June 2022 and that it had been delivered by hand.
19. The application for an eviction order was made to the Tribunal by Miss Cassidy on 17 September 2022.
20. Having established that the Applicants were aware that there were potential implications for the Applicants if they provided misleading information to the Tribunal with regard to their intention to sell the Property, the Tribunal was satisfied, on the balance of probabilities, that the Applicants intended to sell the Property and to put it up for sale within 3 months of the Respondent vacating it (subject to the extent of works required to remedy water damage in the bathroom not taking a longer period).

REASON FOR DECISION

21. Whilst the Tribunal considered that it was valid and appropriate for the Applicants to want to get their affairs in order prior to Mr Nash retiring, in considering whether or not it was reasonable for the Tribunal to grant an eviction order at this time in all the circumstances of the case (including the Respondent’s pregnancy), the Tribunal gave significant weight to the submissions made by the Respondent that she had no objection to the granting of the eviction order, that she did not seek to argue that it would not be reasonable to grant an eviction order and that it would be “beneficial” to her for an eviction order to be granted.
22. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that it would be reasonable to grant an eviction order.

DECISION

23. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

13 February 2023



Chair

Date