

Housing and Property Chamber
First-tier Tribunal for Scotland



Written 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/22/1445

Re: Property at 30 Cornhill Drive, Coatbridge, ML5 1RT (“the Property”)

Parties:

Mrs Maria Benson, 28 Bellsdyke Road, Airdrie, ML6 9DU (“the Applicant”)

Ms Karen Johnston, 30 Cornhill Drive, Coatbridge, ML5 1RT (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

1. This Hearing was the second Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 109 and concerned an Application for an Order for Eviction under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could also be made. The hearing took place by teleconference.

2. Attendance and Representation.

The Applicant was not present, her representative Stephen O’Hare, HC2M Properties, 10 Sunnyside Road, Coatbridge, ML5 3DG was present on her behalf.

The Respondent was not present. She was served by Sheriff Officer on 24th August 2022. Since the last CMD the Respondent had been notified of this CMD hearing and had been sent a copy of the additional documentation lodged on behalf of the Applicant.

3. Preliminary Matters.

There were no preliminary matters other than the fact the Respondent was again not in attendance. The Applicant's representative said that he had sent her an email over a week ago to arrange a property inspection. The Respondent had telephoned to say that she had obtained advice from the Citizen's Advice Bureau that inspections were not allowed. The Applicant's representative had checked this with the Citizen's Advice Bureau. Nothing further had been received from the Respondent although a neighbour complaint had been received and problems with rent arrears had continued.

At the last Case Management Discussion the Tribunal did not have before it available evidence which it required to consider. The Applicant has since lodged a Home Report dated July 2022 and a contract completed for marketing and the sale of the property also dated July 2022. These had been sent to the Respondent.

There were no other preliminary matters raised.

4. Matters Arising.

The Applicant's representative said that the Applicant sought an eviction order. The Applicant has had to borrow money to pay her mortgage. Since the last CMD the Applicant was now on medication from on or around October 2022 due to stress and anxiety. She wishes to sell the property and no longer want to rent same. She has been struggling with the financial stress of same and relies on the rent to pay the mortgage. Due to rent arrears she has had to borrow money to meet the mortgage on the property.

The Applicant's representative said the Respondent has a son who is 18 or 19 years of age but he was not sure if he is still in the property. The Applicant's representative had told the Tribunal at the last CMD that the Applicant had rented the property for nearly 2 years. The first tenant left the property in a poor state. This has meant the property has been the cause of stress and anxiety for the Applicant. A home report and marketing contract had now been lodged and both had been carried out.

Previously the Applicant's representative said that the Respondent he was aware had been speaking to the council about alternative accommodation and she is on the housing list. He said that the Respondent had been off sick at one point and did not receive full pay.

5. Reasons for Decision and Findings in Fact

1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at the Hearing. She had since been provided further evidence and notification of this CMD date but had not engaged with the Tribunal.
2. The Applicant sought an Order for Eviction on the basis that the Applicant as landlord intends to sell the property.
3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.
4. There was a PRT in place between parties dated 15th December 2021.
5. A Notice to Leave was sent to the Respondent on 12th April 2022. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 1 of the 2016 Act entitled to sell the property and intends to market same and put up for sale. Further it is reasonable to issue an Eviction order.
6. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
7. The Tribunal noted the Local Authority under the 2016 Act had been notified.
8. On the evidence available to the Tribunal the Respondent had no dependents residing with her under the age of 18. She had not made written representations and the Tribunal had limited information on her circumstances. The Applicant had rented the property once before and that ended badly due to damage. The Applicant is taking medication due to anxiety and stress the Tribunal was told which is related to the property. She has had to borrow to meet mortgage payments on the property and has decided to market the property and sell same. The Tribunal found an Order was reasonable.
9. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

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.

Karen Kirk

21st December 2022.

Legal Member/Chair

Date