



**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/23/1678**

**Re: Property at Seaview West, Main Street, Scalloway, Shetland, ZE1 0XJ (“the Property”)**

**Parties:**

**Andrew Holt, Sabina Holt-Brook, North House, Papa Stour, Shetland, ZE2 9PN (“the Applicants”)**

**Suzanne Van der Hoek, Seaview West, Main Street, Scalloway, Shetland, ZE1 0XJ (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) 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 in question was by the Applicants to the Respondent commencing on 11 November 2021.
2. The application was dated 18 May 2023 and lodged with the Tribunal on 24 May 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*. It was undated but was said to have been served upon the Respondent by hand-delivery on 17 February

2023, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice said only “The property is to be sold” and that a “Letter of engagement is available on request”. The Notice to Leave intimated that an application to the Tribunal would not be made before 13 May 2023.

4. The application papers included a copy of a letter from Harper Macleod LLP dated 18 May 2023 saying that they had been instructed to market the Property and had “already visited the property to obtain the necessary details and everything is ready for the property to be advertised for sale as soon as it is ready”. The application itself explained that the reason for seeking to evict and sell was that the Applicants were in later life and found the task of maintenance of the Property to have “become too onerous a task”.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Shetland Islands Council on 16 May 2023 was included in the application papers.

### **The Hearing**

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 November 2023 at 10:00. We were addressed by the parties, all of whom were in attendance.
7. We noted that the application had been lodged by Mr Holt only, though Mrs Holt-Brook had submitted a letter of consent. We queried whether there was a specific reason that only one of the co-landlords sought the eviction order. There was none. We suggested that the application should be amended so that both Mr Holt and Mrs Holt-Brook be co-applicants and this motion was made. The Respondent did not oppose this. We duly amended the application to be in the name of both Applicants.
8. At the CMD, the Applicants confirmed that the application for eviction was insisted upon. They explained further that the Property was a Victorian property in an exposed location next to the sea, and required increased amounts of maintenance which the Applicants, who were now in the 70s, found too great a burden. They no longer wished to be landlords of the Property, despite the Respondent having been a good tenant.
9. The Respondent stated that she did not oppose the application. She understood the Applicants’ desire to sell and did not wish to stand in their way. She had, however, been unable to obtain alternative accommodation to date. She said that she had submitted an application for public housing but had been advised that she could not leave the Property voluntarily without being regarded as intentionally homeless. She had been advised that she required to await the conclusion of the Tribunal process in order to advance her housing application. She stated that she lived at the Property with her 7 year-old child, who was in the local primary school. The Property was not specially adapted for their use,

nor specifically required by them due to any other characteristic or circumstance.

10. The Applicant acknowledged that, as the application was subject to the 2022 Act, the earliest that the Applicant could advance any order for eviction was after the anticipated expiry of the 2022 Act on 31 March 2024. We confirmed that the Respondent was similarly aware of this restriction and she was. Having discussed matters at some detail, it was clear that the Respondent was still consenting to the order sought.
11. In regard to other relevant matters, the Applicants explained that they sought to sell the Property as soon as they were able, and that the solicitors instructed were ready to proceed when the Property was available.
12. We note that after the conclusion of submissions, we adjourned briefly to discuss our findings in fact and Decision. On recommencing the call to deliver an oral version of this Decision, the Respondent was not present on the call. As all submissions had been concluded on the merits of the case, we proceeded to conclude matters in the absence of the Respondent.
13. The Applicants confirmed that they had no motion for expenses. No motion for expenses was made for expenses by the Respondent during her time on the CMD conference call.

### **Findings in Fact**

14. On 11 November 2021, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on 11 November 2021 (“the Tenancy”).
15. On or around 17 February 2023, the Applicants’ letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicants wished to sell the Property.
16. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 13 May 2023.
17. A copy of the Notice to Leave was served on the Respondent by hand-delivery by the Applicants’ letting agent, as per the provisions of the Tenancy Agreement, on 17 February 2023.
18. Clause 4 of the Tenancy Agreement provided for notices to be served in hard copy by personal delivery.
19. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 18 May 2023.

20. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Shetland Islands Council on 16 May 2023.
21. The Applicants formally instructed Harper Macleod LLP to market the Property for sale on or about 18 May 2023.
22. The Applicants wish to sell the Property with vacant possession in early course. They wish to discontinue acting as landlords, as they find the duties of a landlord (in particular regarding maintenance of the Property) to be too onerous given their ages and circumstances.
23. The Respondent resides with her 7 year-old child at the Property. Her child is in full time education at the local primary school.
24. The Respondent is making active attempts to obtain alternative accommodation but has thus far failed to obtain a new tenancy.
25. On 26 October 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 17 November 2023 upon the Respondent.

### **Reasons for Decision**

26. 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.
27. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...the landlord intends to sell the let property.*
  - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
    - (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 tenant 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 landlord 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.*
28. The letter from Harper Macleod of 18 May 2023 constitutes evidence under paragraph (3)(a). On the basis of the submissions by the Applicants we agreed that paragraphs (2)(a) and (b) were also satisfied.

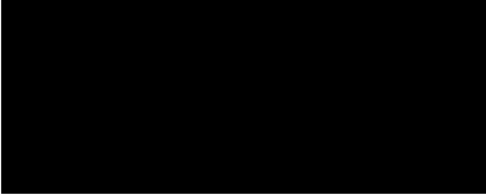
29. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We found it likely that the maintenance requirements for a sea-side Victorian property on Shetland would be significant. We accepted that the Applicants' desire to cease to be a landlord of the Property was genuine and the reasons given for their decision were valid. We were thus satisfied that the Applicants' reasons for seeking eviction were reasonable.
30. There was no argument made by the Respondent against the reasonableness of eviction as, when discussed with her at the CMD, she did not oppose the order. The parties both believed that the Respondent's application for public housing may be assisted if she were subject to an order for eviction under Ground 1. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant.
31. We were not minded to grant any additional suspension of the order to evict (and none was requested). The Respondent will have a period of slightly over four months so as to obtain suitable alternative accommodation before being under threat of eviction.
32. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of:
  - a. the day following the end of a period of 6 months beginning the date of our order (that is 18 May 2024); or
  - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (currently scheduled for 31 March 2024).

## Decision

33. In all the circumstances, we 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, suspended as stated above in terms of the 2022 Act.

## 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.



17 November 2023

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Legal Member/Chair

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Date