



**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**

Reference number: FTS/HPC/EV/23/2599

Order granted on 25 March 2024.

Re: Property at 3 Saughtree Avenue, Saltcoats, KA21 6BW (“the Property”)

**Parties:**

Kathy Clark, residing at 35 West Werberside, Edinburgh, EH4 1SZ (“the Applicant”)

Ms Louise Murray, residing at 3 Saughtree Avenue, Saltcoats, KA21 6BW (“the Respondents”)

**Tribunal Members:**

Paul Doyle (Legal Member)

Leslie Forrest (Ordinary member)

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of schedule 3 to the 2016 Act.**

**Background**

The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the “2016 Act”). On 17 October 2023 the Applicant lodged Form E with the Tribunal. The documents produced were a Tenancy Agreement (which commenced on 26/06/2020); a Notice to Leave served on 06/07/2023, and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

## **Case Management Discussion**

A case management discussion took place by telephone conference at 2.00pm on 25 March 2024. The Applicant was represented by Ms M McDiarmid of Hovepark Lettings Ltd. The respondent was not present but was represented by Mr A Meek of CHAP.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 17 June 2020.
2. The lease commenced on 26/06/2020. The rent in terms of the Tenancy Agreement was £575 per month.
3. On 6 July 2023 the Applicant served a Notice to Leave on the Respondent. The Applicant wants to sell the Property.
4. Prior to November 2023, the Applicant instructed McDougall McQueen, solicitors, to market the Property for sale.
5. On 17 October 2023, the Applicant submitted her application to the tribunal.
6. The Applicant seeks recovery of possession of the Property in terms of Ground 1 of part 1 of schedule 3 to the 2016 Act. On the facts as we find them to be, the Applicant
  - (a) is entitled to sell the let property,
  - (b) intends to sell the Property for market value 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.
7. The Respondent, after taking advice, does not oppose the application. She has already made applications for alternative housing.
8. This is the only rental property the Applicant owns. The property is burdened with a mortgage. The mortgage term is at an end and the heritable creditor is demanding repayment. The applicant is now retired and not able to arrange alternative finance. She has to sell the property to pay the heritable creditor and redeem the mortgage. The applicant wants to use the net free proceeds of sale to fund her retirement.

## **Reasons for the Decision**

9. We balance the interests of the parties. The applicant is forced to sell the property because the term of her mortgage is at an end and the heritable creditor demands repayment. The Respondent does not offer opposition to the application.

10. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the Property.

11. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in Ground 1 of part 1 of schedule 3 to the 2016 Act is established. The Respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

## **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 of schedule 3 to the 2016 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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**P Doyle**

**Legal Member**

**24 March 2024**