



**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/23/2432**

**Re: Property at 3 Forth View, Dalgety Bay, Fife, KY11 9SD (“the Property”)**

**Parties:**

**Miss Nicola Wilson, 9 Lumsdaine Drive, Dalgety Bay, Fife, KY11 9YU (“the Applicant”)**

**Miss Samantha McIntosh, 3 Forth View, Dalgety Bay, Fife, KY11 9SD (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.**

**Background**

1. On 20<sup>th</sup> July 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 1 and 1A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. The Case Management Discussion (“CMD”) took place by teleconference on 22<sup>nd</sup> January 2024. Reference is made to the CMD Note of the same date.
3. Subsequent to the CMD the Tribunal issued a Direction to the parties. The Applicant was directed to lodge vouching in relation to the mortgage payments on the property and a Schedule of Income and Outgoings. The Respondent was directed to lodge written Representations in relation to reasonableness.

4. On 23<sup>rd</sup> February 2024 the Respondent sent an email to the Tribunal listing the points she wished to make regarding reasonableness. There were that she had always paid the rent on time, there was a risk of homelessness for her and her two children, there would be an impact on her livelihood as she worked from home, and that there is a current housing crisis which will make it difficult for her to secure accommodation.
5. On 15<sup>th</sup> March 2024 the Applicant sent an email to the Tribunal making submissions as to why the order should be granted. She provided vouching of the rent being £690 per month and the mortgage payment being £393.52 per month.

## Hearing

6. The Hearing took place by teleconference. The Applicant represented herself. The Respondent did not dial in and was not represented.
7. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
8. The Applicant said that she had received a text from the Respondent the previous Monday asking that the Applicant complete a tenancy reference urgently. The Applicant said she had also received an email from Your Move, Dalgetty Bay, using LSL Letting Hub, requesting a reference.
9. The Applicant said that she was now only proceeding on ground 1 and not Ground 1A. She confirmed that she intended to sell the property, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. She said that her partner was made redundant some months ago. She herself owns only the let property and she wishes to sell it so that she can invest the proceeds in her partner's home, thereby reducing the monthly mortgage payments. This will ensure that they can continue to live there with their two children, ages 10 and 12. The Applicant said that she is employed as an IT Manager. She has been experiencing problems with her own health.
10. The Applicant said that it was a year since the Notice to Leave had been served and made reference to her written submission where she had outlined other properties which had been available to rent. She said that as far as she was aware the Respondent lived in the house, which is a three bedroomed property, with her two children, one who is around 11 and an older teenager who she believes is doing an apprenticeship. She is aware that the Respondent works from home but does not know what she does. The property has not been adapted in any way to cater for disabilities. The Applicant said that the Respondent has not paid this month's rent.

## Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 7<sup>th</sup> September 2018;
- c. A Notice To Leave was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Applicant owns the property;
- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicant wishes to invest in the property she lives in with her partner;
- h. The Respondent lives in the property with two children;
- i. The Respondent works from home;
- j. The Respondent has had almost a year, since the Notice to Leave was served, to find alternative accommodation;
- k. The Applicant has recently been contacted to provide a reference for the Respondent.

## Reasons for Decision

11. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

### **Private residential tenancies: discretionary eviction grounds**

*(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.*

*(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.*

*(3)In schedule 3 (eviction grounds)—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for “must” substitute “may”,*

*(ii)the words from “the landlord” to “3 months” become paragraph (a),*

*(iii)after paragraph (a) insert “, and*

*“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i)for “must” substitute “may”,*

*(ii)the words from “the landlord” to “home” become paragraph (a),*

*(iii)after paragraph (a) insert “, and*

*“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—*

*(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,*

*(ii)for sub-paragraph (2)(c) substitute—*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii)sub-paragraph (3) is repealed,*

*(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,*

*(h)in paragraph 10(2) (not occupying let property)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii) after paragraph (a), the word “and” is repealed,*

*(iii) after paragraph (b) insert “, and*

*“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,*

*(j) in paragraph 13(2) (criminal behaviour)—*

*(i) in the opening words, for “must” substitute “may”,*

*(ii) after paragraph (a), the word “and” is repealed,*

*(iii) after paragraph (b) insert “, and*

*“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—*

*“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact,*  
*and”.*

12. The Tribunal now has to decide if it is reasonable to grant the eviction order.

13. The Tribunal are of the view in this case that the Applicant has established Ground 1 by provision of the Home Report, and by her own confirmation that she intends to sell the property. The Tribunal therefore has to exercise its discretion in applying the facts to decide if it is reasonable to grant the order. The Tribunal accepts the Applicant’s reasons for wishing to sell, and that she is entitled to do so. The Tribunal has considered the submissions made by the Respondent, but on balance considers it reasonable to grant the order for eviction. There are no factors mentioned such as disability, and the Respondent has had a year, since service of the Notice to Leave, to find alternative accommodation. The Tribunal also notes that the Respondent previously engaged in the process by appearing at the CMD and by complying with the Direction. Given that she has not attended today, and given that the Applicant has been contacted for a reference it may be that the Respondent has secured alternative 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.**



**03 May 2024**

---

**Legal Member/Chair**

---

**Date**