



**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/24/0312**

**Re: Property at 19 Kirkoswald Road, Flat 2/2, Newlands, Glasgow, G43 2YH (“the Property”)**

**Parties:**

**Mrs Elizabeth McCart, 5 Swanston Road, Newtonabbey, CO Antrim, BT36 5DN (“the Applicant”)**

**Mr Christopher Kilshaw, 19 Kirkoswald Road, Flat 2/2, Newlands, Glasgow, G43 2YH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

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

**Background**

1. On 19<sup>th</sup> January 2024 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 Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 28<sup>th</sup> March 2018 and a rent of £575 per month;
  - ii. Copy Notice to Leave dated 19<sup>th</sup> October 2023;
  - iii. Copy email dated 19<sup>th</sup> October 2023 to the Respondent serving the Notice to Leave;

- iv. Letter from the Respondent following receipt of the Notice to Leave expressing an interest in purchasing the property;
  - v. Section 11 Notice and proof of service;
  - vi. Copy Death Certificate for John Russell McCart.
3. The Application was served on the Respondent by Sheriff Officers on 11<sup>th</sup> June 2024.
  4. On 1<sup>st</sup> July 2024 the Respondent emailed a Written Submission to the Tribunal outlining why he thought it would not be reasonable to grant the order for eviction.

### **Case Management Discussion**

5. The Case Management Discussion (“CMD”) took place on 12 July 2024 by teleconference. The Applicant was represented by Mr Haq of Martin & Co, Letting Agents. The Respondent represented himself.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. 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.
7. Mr Haq confirmed that the Applicant sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. The Application form had said Ground 1A, but the Notice to Leave had said Ground 1, and he therefore wished to proceed on Ground 1.
8. Mr Haq said that the Applicant intended to sell the property. She had owned the property jointly with her husband, but he had passed away and she did not wish to be a landlord any longer. She resides in Northern Ireland and is not geographically close to the property. He said that the Respondent had wished to purchase the property. Mr Haq had referred him to a mortgage broker. An offer had been made by the Respondent’s partner to purchase the property, but it had fallen through in October 2023. The Applicant wished to proceed to sell the property.
9. The Respondent confirmed that he did not dispute that the Applicant wished to sell the property, and on that basis the Tribunal considered that the Ground had been met.
10. The Chairperson explained that Ground 1 was now a discretionary ground, and that the Tribunal had to be satisfied that it was reasonable to grant an order for eviction before one could be granted.

11. Mr Haq said that the Applicant had lost her husband. He had been the one who had dealt with the rental property which had been in joint ownership. The Applicant's financial position had changed. She now wished to wrap things up and get on with her life. She is in her seventies.
12. The Respondent referred to his written submission which gave his opposition to the order being granted. He did not consider it to be reasonable to grant the order due to the impact on his dependants, financial hardship and the fact the he wanted to buy the property when he could afford to.
13. As there was a dispute regarding reasonableness the Tribunal decided to fix a Hearing on the matter. It was agreed by both parties that the best way to proceed would be by way of videoconference.
14. The Tribunal urged the parties to read the Tribunal's rules, and look at Decisions on the Tribunal's website to see what sort of information the Tribunal will be looking for. The Tribunal will expect the parties to comply with the Tribunal's Rules in relation to lodging documents and Lists of Witnesses.

### **Subsequent to CMD**

15. On 3<sup>rd</sup> December 2024 the Applicant's agent lodged a Written Submission on behalf of the Applicant.
16. On 5<sup>th</sup> December 2024, , the Respondent sent an email to the Tribunal entitled **Submissions Ahead of the Hearing**, running to 107 pages in length and including an email from Kirsty Stewart, Neurodevelopmental Occupational Therapist, dated 4<sup>th</sup> December 2024, confirming a diagnosis of autism for the Respondent's 16 year old daughter, Eve.

### **Hearing**

17. The Hearing took place on 6<sup>th</sup> December 2024 by video conference. The Applicant was present, and was represented by Mr Haq of Martin & Co, Letting Agents. The Respondent represented himself, and was accompanied by his supporter, Kate McClure, who is also his partner.
18. The Chairperson explained that it had been established at the CMD that the Applicant had title to sell the property, and that she intended to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it. She explained that the Tribunal's role was now to decide if it was reasonable to grant an eviction order on account of those facts. She explained

that the Tribunal had to make their decision based on balancing the circumstances of the Applicant against those of the Respondent at the present time and that things which had happened previously might not be relevant.

## **Evidence**

19. The Applicant gave evidence. She said that she and her now deceased husband had bought the property some years ago for their daughter to reside in with her husband. The marriage broke up and they moved out of the property. The Applicant and her late husband decided to rent out the property, partly in the hope that their daughter and her husband would reconcile. That did not happen.
20. The Applicant said that her late husband had done all of the work in relation to being a landlord. He died in January 2023. He had been ill for several years before that. The couple had already taken the decision to sell the property, as their daughter with her two children had moved back to Northern Ireland, as indeed had her former husband, and so they no longer had any connection with Scotland, but, given that Mr McCart was in and out of hospital a lot in the last two years of his life, and had a lot of independence stripped away from him, the intention to sell was not taken forward.
21. Mrs McCart said that after her husband died she had a lot of administration and paperwork to cope with in dealing with his estate and she was still sorting out her husband's affairs. She had not realised how much there would be to do in relation to the property, including tax returns and repairs. There was also less money coming in because she has lost her husband's income. She was experiencing ill health herself. In March 2023 she instructed her agent that she wished to evict the tenant and sell the property. It would be one less thing for her to worry about. In her written submission to the Tribunal she said that her daughter and two autistic children were in a rented house near her but her daughter's health condition meant she would cope better in a bungalow. The sale of the property would help her in her wish to be able to provide financial assistance to her daughter to buy her own property. However, in her oral evidence she confirmed that this was not an immediate concern.
22. The Respondent was given the opportunity to cross examine the Applicant. He established from her that the flat was managed for her by the letting agent. She confirmed, when asked, that the work she had to do was deal with the landlord registration, landlord insurance and payments to the property factor. She also had to complete a tax return. These were all things that she had never needed to deal with before as her husband had taken care of them.
23. The Respondent also established from the Applicant that the letting agent dealt with collecting the rent, and inspections of the flat.
24. The Respondent asked the Applicant if she considered that these were valid

reasons on which to put him and his children out. The Chairperson did not allow this line of questioning, pointing out that it was the Tribunal's job to decide if it was reasonable to grant the order.

25. The Respondent also started to ask the Applicant questions about his previous attempts to purchase the property. The Chairperson did not allow this line of questioning as the sale had not proceeded and the Tribunal had to base their decision on current circumstances.

26. The Respondent gave evidence. He said that he is a self employed handyman. He described the property as a family home for himself and his two daughters, aged 16 and 8. He said that he has tenanted the property since 2018 and has created a lovely home for them. Having to move would potentially disrupt their schooling. He does not live with his partner, Kate, but she had her family living close by and her family had welcomed his other daughter Eve. He does not have any family himself who can provide him with support.

27. The Respondent said that his elder daughter, Eve, has just turned 16. She attends Turnbull High, near Bishopbriggs. She has historically experienced anxiety and he has tried to help her manage it. He said that his marriage breakdown had happened twelve years ago and was stressful for her and he has tried to keep things consistent. For the last three or four years Eve has been receiving support from the pastoral care team at her school. He made reference to the letter he had lodged from the head of pastoral care at Turnbull High. The Respondent said that Eve had attended CAMHS (Children and Adolescent Mental Health Services) for about two years and has recently received a diagnosis of autism. He said that the diagnosis was a relief. The neurodevelopment occupational therapist, Kirsty Stewart, told him that she had spent a lot of time discussing with Eve how she felt about the flat. Eve had told her she regarded it as a safe space.

28. The Tribunal established from the Respondent that Eve spends a minimum of two nights per week with the Respondent at the flat and lives the rest of the time with her mother in Springburn. She uses the flat to come and go when she feels the need, particularly to relax and study in peace. She initially struggled with the commute from her home in Springburn to the flat, but has developed coping strategies which allow her to use various modes of transport to get there, including driving as she goes. Her confidence has been built through repetition. The Respondent said that he felt it would have a negative impact on Eve if the process had to be started again. He could not be assured of finding another property in the area due to the current rental market.

29. The Respondent said that he also has an 8 year old daughter, Rosie, who attends school near to the flat. He also has her two days per week. He did not say if this included overnight. The Tribunal established with the Respondent that the children do not have the same mother, and that Rosie's mother is his partner, Kate McClure. They do not live together but she lives in Giffnock, which is within a two mile radius of the flat. The Respondent said that one of the main reasons he has the flat is to support Eve so that she has her own space. The

Tribunal established from him that Eve's mother is married and lives with her husband and their child, Eve's half sibling. Eve also has her own space there.

30. The Respondent said that due to the increase in the costs of rental, and the lack of properties to rent in the area he had been unable to find somewhere else. He said that his current rent is £592.25 and he paid a deposit of £750. He would need to find another property within a two mile radius of the flat. There was nothing within his budget. He said that three bedroom properties locally would be in the region of £1065 per month to rent. This would mean increased monthly outgoings for him and also immediate outgoings by way of removal costs. He had calculated that those would amount to around £5397. His current monthly income is £2800, including an element of universal credit, and his current outgoings are £2400 per month. The Tribunal established with him that he had no capacity for increasing his earnings, his Universal Credit did not include an element for Eve as she was considered to reside primarily with her mother, and that the rent element of Universal Credit would not increase as it would be capped at the figure for Local Housing Allowance based on his circumstances. He did pay maintenance to Eve's mum, but not to Rosie's mum, although he gives her money as and when it is needed. He was fearful of ending up in temporary accommodation but did concede that if he was evicted both of his children would have suitable homes elsewhere with their respective mothers.
31. The Respondent said that he was registered with Southside Housing Association and another association he could not recall, as looking for accommodation including mid market rental properties and had been since November 2023, but they had not been able to provide him with anything. When questioned by the Tribunal on when he had last contacted the Association, he said it had been some 6 months ago and he was noted for three bedroom properties. He had not accessed any independent advice, nor pursued any private rented sector properties in his area of choice as he said he could not afford them and was not willing to move further afield. The Tribunal established that any help he got with rent would be capped at the Local Housing Allowance level and that he was seen to be under occupying his current property as Eve was not part of his household for benefits purposes. He said that there was a significant housing crisis and referred to statistics, saying that over 15000 children had been affected by it.
32. The Respondent said that his proposed solution remained for him to buy the property. He had previously explored whether anyone would be able to buy the property and rent it back to him, but it was not feasible. He was in an Individual Voluntary Arrangement in relation to debt, and was not able to get a mortgage in his own name. He said that the IVA has now been satisfied and from April 2025 he will be able to get a mortgage. He said the price he would be willing to pay would be £108,000. The Tribunal pointed out that this was in the future and not definite. He said that he felt that all solutions have to be explored. He again said that he could not afford a private rental, in the area or in an area close to Eve's mum and was not willing to consider other areas.

## Findings In Fact

- a. The parties entered in to a Private Residential Tenancy Agreement with a commencement date of 28<sup>th</sup> March 2018 and a rent of £575 per month;
- b. A Notice to Leave dated 19<sup>th</sup> October 2023 was served timeously and correctly;
- c. The Applicant's husband died on 13th January 2023;
- d. The Applicant owns the property;
- e. The Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it;
- f. The Applicant and her husband bought the property as a home for their daughter and her husband;
- g. After their daughter and her husband vacated the property the Applicant and her husband decided to rent it out;
- h. The Applicant's daughter now resides in Northern Ireland and the Applicant no longer has any connection with Scotland;
- i. the Applicant's daughter has a health condition and both her children have autism. e Applicant's husband was responsible for the administration relating to being landlords of the property;
- j. After the death of her husband the Applicant found it difficult to cope with the administrative demands of being a landlord;
- k. In March 2023 the Applicant instructed her letting agent to serve a Notice to Leave with a view to selling the property;
- l. The parties agreed that the Respondent could purchase the property from the Applicant but the sale did not proceed;
- m. The Respondent is a self employed handyman;
- n. The Applicant has two daughters, Eve who is 16, and Rosie whom is 8;
- o. Eve and Rosie have different mothers;
- p. Eve has a diagnosis of autism;
- q. Eve considers the property a safe space for her;
- r. Eve attends high school in Bishopbriggs, which is approximately 10 miles from the property;
- s. Eve spends a minimum of two nights per week with the Respondent;
- t. Eve lives the rest of the time with her mother in Springburn;
- u. Eve requires to travel from school to the property by public transport which can cause her anxiety, although she has coping mechanisms in place;
- v. Eve would not be made homeless if the Respondent was evicted as she has accommodation with her mother;
- w. Rosie attends primary school within walking distance of the property;
- x. Rosie spends approximately two days per week with the Respondent;
- y. Rosie lives the rest of the time with her mother, just across from her primary school;
- z. The Respondent is in a relationship with Rosie's mother but they do not live together;
- aa. Rosie would not be made homeless if the Respondent was evicted as she has accommodation with her mother;
- bb. The Respondent wishes to remain in the property so that he can support Eve;
- cc. The Respondent has not been able to find similar alternative accommodation in the area which he can afford;
- dd. The Respondent receives Universal Credit but it does not include an element for Eve as she is deemed to live principally with her mother;

- ee. The Respondent still wishes to purchase the property,
- ff. The Respondent is not in a position to apply for a mortgage until April 2025.

## Reasons For Decision

33. The ground of eviction is Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 which states as follows:

*Landlord intends to sell*

*1(1)It is an eviction ground that 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.*

34. The Tribunal examined the title to the property prior to the application being accepted and was satisfied that the Applicant had title to sell the property.

35. The Tribunal heard evidence from the Applicant, and the Tribunal found her to be credible and reliable. The Applicant gave evidence that she intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating. Having accepted that evidence the Tribunal had to decide whether it was reasonable to issue an eviction order on account of those facts, which is an exercise in balancing the circumstances of the Applicant and the Respondent.

36. Having decided that the Applicant's evidence was credible and reliable the Tribunal accepted that she wished to sell the property as she had no connection with Scotland, and she was struggling with the administrative burden of being a landlord following the death of her husband

37. The Tribunal heard evidence from the Respondent. The Tribunal had no reason to doubt his credibility or reliability. The Respondent said that he wanted to keep the property to allow him to support his daughter, Eve, who has a diagnosis of autism. The Respondent presented as a caring parent, trying to do the best for his daughter, and he spoke passionately about her. He spoke about his desire to keep his family together and about his desire to purchase the property from the Applicant, seeing it as the best solution for everyone. He was honest about the fact that he would not be able to afford similar accommodation in the same area.
38. The Tribunal did have sympathy with the fact that Eve has autism and the difficulties that she experiences, but neither she nor Rosie would be rendered homeless by an eviction order as they both live principally with their mothers, nor would it affect either child's ability to attend their current school.
39. The Respondent wishes to purchase the property. He is not, however, able to apply for a mortgage until April 2025, and although he thinks he will be able to obtain one, he has not lodged any evidence to show that he will. He is also relying on the goodwill of the Applicant to accept an offer in an amount determined by him, rather than putting the property on the market and therefore generating an offer at current market value. In the period of over a year since the Notice to Leave was served, the Respondent remained intent on eventually purchasing the property and had made little effort to explore other options. He did not seem to take account of the expressed wishes and intentions of his landlord, nor accept that the Applicant was not obliged to sell to him.
40. The Tribunal considers that the balance is tipped in favour of it being reasonable to grant the order. The Applicant has the right to decide that she does not wish to be a landlord anymore and she has title to sell the property. She has found it difficult to cope with the administrative burden of being a landlord in the wake of her husband's death. The Tribunal cannot see any factors in favour of the Respondent which will outweigh those. Granting the order will not render either child homeless, nor will it affect either child's ability to attend school, the Respondent is not in a position to proceed with a purchase imminently, nor has he provided any evidence to confirm that he will be able to purchase the property at all. The Tribunal thinks that it is commendable that the Respondent wants to do the best for his daughters, particularly Eve, but it is unlikely that he would be deemed to require three bedrooms if he were to apply to a local authority or housing association, nor would he receive benefits that would allow him to meet the rent on such a property. He cannot expect the Applicant to continue being a landlord so that his choices can be supported.
41. Given the time of year and the probability that local authorities and advice bodies will be heading towards a Christmas close down the Tribunal has decided that the eviction order should be suspended until 6<sup>th</sup> February 2025.

## 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.

Alison Kelly

6/12/24

Legal Member/Chair

Date