



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/22/2542**

**Re: Property at 30 Riverbank Street, Newmilns, KA16 9HL (“the Property”)**

**Parties:**

**Beth Coughlan, Mr Dirk Weijnants, 9A High Street, Stewarton, KA3 5BP (“the Applicants”)**

**Mr David Wilson, Mrs Ahakera Galbraith or Wilson, 30 Riverbank Street, Newmilns, KA16 9HL (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)**

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

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

**Background**

- 1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, email correspondence with the Respondents and letter from a solicitor and estate agent confirming that they are instructed to sell the property. The application is based on ground 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property.**
- 2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 16 August 2022. Both parties were notified that a case management discussion (“CMD”) would take place by telephone**

conference call on 21 September 2022, and they were required to participate.

3. The CMD took place on 21 September 2022 by telephone conference call in relation to the application and a related application for a payment order under reference CV/22/0938. The Applicants participated and were represented by Ms McCourt, the letting agent. The Respondents did not participate and were not represented.

### **Case Management Discussion**

4. Ms McCourt advised the Tribunal that she received a text message last week from the Respondents confirming that they are still residing at the property. No response was received to other enquiries about access or whether they had received documents from the Tribunal. Ms McCourt confirmed that an order for eviction is sought on ground 1 only, although the application and Notice to Leave had also referred to other grounds.
5. The Tribunal was told that the Applicants are still the joint owners of the property. As they have been unable to get access to the property, they have not obtained a valuation or instructed a Home Report. However, they intend to do so when the property is recovered and then market it for sale. Ms Coughlan advised the Tribunal that they have decided to sell for several reasons. There are now rent arrears of approximately £6000. Although it has been difficult to get access, they got in a few months ago and were dismayed at the condition of the property. It has been substantially damaged by the Respondents. They had invested all their savings in the property and now feel that they have no option but to sell it as soon as possible. They are not sure how much work will be required before they do that. For example, the back garden was full of refuse and dog faeces when they saw the property, and this will have to be addressed.
6. In response to questions from the Tribunal, Ms Coughlan stated that the Applicants own three other properties although one of these is also to be sold for similar reasons. She advised that her retirement lump sum and Mr Weijnants's redundancy payment were invested in this property. As well as the substantial rent arrears, the property has sustained several thousand pounds worth of damage at the hands of the Respondents and their dog. This has caused a great deal of stress for both Applicants and Ms Coughlan has had to consult her GP. Mr Weijnants said that there has also been a psychological impact due to the current condition of the property after he spent so much time and effort putting the property into good condition before it was let out.
7. The Tribunal was told that the Respondents live at the property with a nine year old child who attends a local school. No information is known about any health issues or disabilities affecting the household. Mr Wilson is in employment and drives a company car. Mrs Galbraith runs an accountancy business and sometimes works from home. She has a private registration plate on her car. The couple recently had an elaborate wedding with lots of photographs on

social media. There is no evidence of any financial issues affecting their ability to pay rent. They have also refused to provide access for inspection and repair. However, when a problem with the heating was reported, the Applicants paid for an emergency plumber to attend because their usual plumber was unavailable. The Respondents have also breached the terms of their tenancy agreement by having a dog at the property without permission. This would not ordinarily be an issue, but the dog has caused extensive damage within the property.

### **Findings in Fact**

8. The Applicants are the owners and landlords of the property.
9. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
10. The Applicants are entitled to sell the property.
11. The Applicants intend to sell the property when it becomes vacant.
12. The Respondent has incurred rent arrears and have caused extensive damage to the property.

### **Reasons for Decision**

13. The tenancy started on 27 March 2022. The application to the Tribunal was submitted with a Notice to Leave dated 31 March 2022 together with an email to the Respondents enclosing the Notice to leave, also dated 31 March 2022. Clause 4 of the tenancy agreement stipulates that correspondence, including formal notices, are to be sent by email. The Notice was sent to the Respondents using the email address specified in the tenancy agreement
14. The Notice to leave states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property and ground 12, rent arrears over three consecutive months. In correspondence to the Tribunal, and at the CMD, the Applicants confirmed that the order is sought on ground 1 only. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 30 June 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicants have complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
15. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 1 of Schedule 3 (as amended by the Coronavirus

(Scotland) Act 2020) states “(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 ”

16. The Tribunal is satisfied that the Applicants, as owners of the property, are entitled to sell same. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicants intend to market the property for sale when it becomes vacant. They are aware that some essential work will be required before they do so. Furthermore, as they have not been able to get access to the property, a valuation and home report still have to be arranged. The Tribunal therefore concludes that the eviction ground has been established.
17. The Tribunal notes that the Applicants have decided to sell the property because of substantial rent arrears and damage caused to the property by the Respondents. This has caused stress and led to health problems. The Applicants invested their retirement and redundancy payments in the property and are now experiencing financial problems due to non-payment of rent. They are also being denied access to the property which is preventing them inspecting it and ensuring that they meet their obligations as landlords.
18. The Respondents did not participate in the CMD and did not lodge written submissions. The only information available to the Tribunal was provided by the Applicants. It was noted that there is a 9 year old child living at the property who attends a local school. However, both Respondents are in employment and, based on their lifestyle, there is no evidence of financial problems which would prevent them from obtaining alternative accommodation. The Tribunal also had regard to the Respondents’ management of the tenancy property and noted that as well as the arrears of rent, they have not maintained the property or allowed access
19. Having regard to the information available about both parties, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
20. The Tribunal therefore concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

## **Decision**

21. The Tribunal determines that an eviction order should be granted 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.**

**Josephine Bonnar, Legal Member**

**21 September 2022**