



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/22/4285**

**94 High Street, Brechin, DD9 6HE ("the Property")**

**Parties:**

**Taylor McDonald residing at 2 Scotston Cottage, Kinnaird, DD9 6TY ("the Applicant(s)")**

**Jay Lawson, MML Law, Meadowplace Building, Bell Street, Dundee, DD1 1EJ (The Applicant's Representative')**

**Andrew Henderson residing at 94 High Street, Brechin, DD9 6HE ("the Respondent")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) and Sandra Brydon (Ordinary Member)**

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 29<sup>th</sup> November 2022. The application stated that the ground for eviction was as follows:

'Ground 3: The Landlord intends to refurbish the let property a programme of work has been made up and the landlord requires possession of the property to carry out the refurbishment.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 1<sup>st</sup> July 2022.

- Notice to Leave dated 13<sup>th</sup> July 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 8<sup>th</sup> October 2022.
- A letter signed by Andrew Henderson confirming that he received the Notice to Leave on 13<sup>th</sup> July 2022.
- A programme of refurbishment works and accompanying photographs.
- Section 11 Notice addressed to Angus Council and accompanying email dated 29<sup>th</sup> November 2022.

## **2. Case Management Discussion**

This case called for a conference call Case management Discussion (CMD) at 10.00 on 17<sup>th</sup> March 2023.

The Applicant's Representative Jay Lawson attended the CMD.

The Respondent did not attend and was not represented. He had been notified of the CMD by James Booth Sheriff Officer on 15<sup>th</sup> February 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

2.1 Mr Lawson advised the Tribunal as follows:

2.1.1 The Appellant needed to refurbish the Property. He referred the Tribunal to the photographs and the Programme of Works by 1st Seed Property that he had submitted.

2.1.2 The Property is a one bedroom flat.

2.1.3 The Programme of works involved an extensive refurbishment of the Property including the replacement of the bathroom, kitchen fittings, windows to the front of the Property and the boiler.

2.1.4 He expects the refurbishment works to take more than six months to complete.

2.1.5 He does not know the estimated cost of the refurbishment works but it will be a number of thousands of pounds.

2.1.6 The Appellant intends to carry out the refurbishment works as soon as the Property is vacated. He will probably relet the Property once the refurbishment works have been completed.

2.1.7 The Letting agent has spoken to the Respondent and they have agreed that it is not practical for the Respondent to remain in the Property whilst the works are being completed.

2.1.8 The Respondent is forty two years old. He resides in the Property alone. He is unemployed. He has applied to the Council to be rehoused but the Council will not progress his application until an eviction order has been issued. As far as he is aware the Respondent has no disabilities that the Tribunal should be aware of.

2.1.9 There are rent arrears amounting to £927.65 that have accrued over the tenancy.

2.1.10 He accepts that the moratorium of eviction provisions within the Cost of Living (Tenant Protection) (Scotland) Regulations apply to this application as the application was made after 28<sup>th</sup> October 2022.

### **3. The Tribunal made the following findings in fact:**

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties.

3.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.3. The Applicant, is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate ANG33160. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 28<sup>th</sup> February 2022.

3.4 The Notice to Leave was dated 13<sup>th</sup> July 2022 and it was delivered to the Respondent on 13<sup>th</sup> July 2022.

3.5 The Notice to Leave stated that the, which is Ground 3 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 and that the Applicants would not apply to the Tribunal for an eviction order before 8<sup>th</sup> October 2022.

3.6 The Appellant intends to refurbish the Property.

3.7 The proposed refurbishments are largely to the inside of the Property and the Appellant is entitled to carry out the proposed refurbishments.

3.8 As the refurbishments include replacement of the bathroom, kitchen, front windows and boiler of the Property it would be impracticable for the Respondent to reside in the Property whilst the refurbishment works are being carried out.

### **4. Decision**

#### **4.1. Requirements of Section 109 of the Procedure Rules.**

**4.1.1** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlords.

(ii) the name and address of the Landlords' representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The ground stated in the application is that the Landlord intends to refurbish the let property. The Tribunal accepted that this is Ground 3 of Schedule 3 of the 2016 Act.

**4.1.2** The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The programme of proposed works had been provided.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notice to Leave was dated 13<sup>th</sup> July 2022 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 3. It also advised that an application would not be submitted to the Tribunal for an eviction order before 8<sup>th</sup> October 2022.

The lease states that the Respondent originally moved into the Property on 11<sup>th</sup> January 2019. As at 13<sup>th</sup> July 2022 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months and consequently the period of 28 days notice was required.

The Respondent had been given the required period of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

**4.1.3** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

4.2 The Tribunal accepted that the programme of works by 1<sup>st</sup> Seed Property and the oral submissions made by Mr Lawson were sufficient evidence that the Appellant intended to refurbish the Property. Accordingly, the Tribunal found in law that Ground 3 of Schedule 3 of the 2016 Act was met.

4.3 The Tribunal considered Mr Lawson's representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

*'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'*

The Tribunal weighed the respective positions of the parties. They found that it was reasonable for the eviction order to be granted given the poor condition of the Property, the extensive refurbishments required, the fact that it is impractical for the Respondent to reside in the Property whilst the works are being completed, the fact that the

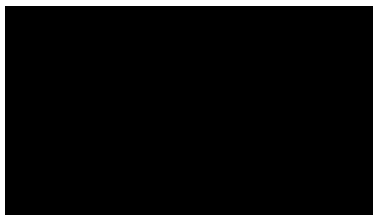
Respondent has not lodged any written representations and that the Respondent has applied to the Council to be rehoused.

4.4 The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the application was received by the Tribunal after 28<sup>th</sup> October 2022.

4.5 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 18<sup>th</sup> September 2023, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **5. 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.**



**Legal Member**

**17<sup>th</sup> March 2023**