



**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**

**Chamber Ref: FTS/HPC/EV/22/1481**

**Re: Property at 20 Kinloch Road, Newton Mearns, Glasgow, G77 6LX (“the Property”)**

**Parties:**

**Dr Mohammed Hosain, 30 Caughall Road, Upton, Chester, CH2 1LP (“the Applicant”)**

**Ms Sibrena Falak, Mr Ali Shair, 20 Kinloch Road, Newton Mearns, Glasgow, G77 6LX (“the Respondents”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Williams (Ordinary Member)**

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

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

**Background**

1. This is an application received in the period between 19<sup>th</sup> May and 16<sup>th</sup> June 2022 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondents are the tenants, in terms of a private residential tenancy agreement that commenced on 19<sup>th</sup> March 2021 at an agreed rent per month of £1200. The Applicant is seeking an eviction order under ground 1.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy Notice to Leave dated 8<sup>th</sup> October 2021 stating that an application for an eviction order would not be submitted before 11<sup>th</sup> April 2022, with evidence of service, copy section 11 notice with evidence of service, copy correspondence from the Applicant, and a Home Report.
3. Service of the application and notification of a Case Management Discussion was made upon the Respondents by Sheriff Officers on 29<sup>th</sup> July 2022.

4. By email dated 18<sup>th</sup> August 2022, the Respondents made the following written representations:

*Please note when we took on the tenancy agreement we were assured that this would be a long-term let and on this condition, we took on the property This allowed our children to attend the local school which we envisaged would be for a long term. We entered into a tenancy agreement in March 2019 and within a short period, we were asked if we wished to buy the property. We were and are not financially able to do so and preferred renting. Thereafter we were served with a Notice to Leave on October 21 and this was despite us informing that we required a long-term tenure and were assured this was not a problem.*

*We are seeking alternative accommodation within the area to prevent disruption to our children's education and schooling and informed the landlord's agents accordingly. We hope to vacate the property by December 31st, 2022, and can give an undertaking in this matter, even though we had intended to reside here for at least five years from the start of the tenancy.*

### **The Case Management Discussion**

5. A Case Management Discussion ("CMD") took place by telephone conference on 12<sup>th</sup> September 2022. Neither party was in attendance. The Applicant was represented by Mr Gregor Cope, Director, Scottish Property Centre.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondents upon the representations of the Applicant and the material before the Tribunal.
7. Mr Cope said there had been no recent contact from the Respondents, despite attempts to contact them. The Applicant has engaged the services of the letting agent to sell the Property as it has become a financial burden. He has had a Home Report carried out and this now requires updating. He will do this when the Property is empty. The Applicant had asked the letting agent for advice on selling the Property with a sitting tenant. The Property requires external works to be carried out, the tenants are in rent arrears, and they have previously denied access to the Property for inspections. Mr Cope said the advice to the Applicant had been to sell the Property without a tenant.
8. The Applicant has been sympathetic to the Respondents' situation and delayed making the application to the Tribunal to allow them more time to find alternative accommodation. The Respondents have always said they are looking to buy

property, although Mr Cope noted the terms of their written representations to the Tribunal.

9. The Respondents last paid rent in March 2022. The rent arrears are now £6000, with the next rent payment due on 19<sup>th</sup> September. The Property is mortgaged and the Applicant is having to pay the mortgage despite the lack of rent.
10. Responding to questions from the Tribunal, Mr Cope said the Respondents have two children who were aged 7 and 9 when the tenancy commenced in 2019. The Property is based in a high-demand catchment area. Although it was difficult to buy property in the area, that has recently changed.
11. In May 2022, there had been a call from the Respondents to the letting agent, stating that one of them had been made redundant and they would be late in paying the rent. There was an undertaking to pay two months rent the following month. This did not happen. Mr Cope was unaware of the current employment status of the Respondents.
12. Responding to questions from the Tribunal regarding the Respondents' proposal that they would leave the Property in December 2022, Mr Cope said the Applicant may well have been agreeable to that proposal if the Respondents had been paying rent or had come to some agreement about repayment of the arrears, but in the current circumstances, the Applicant felt it was reasonable to seek an eviction order.

### **Findings in Fact and Law**

13.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 19<sup>th</sup> March 2021 at an agreed rent per month of £1200..
  - (ii) Notice to Leave has been served upon the Respondent.
  - (iii) The Applicant is entitled to sell the Property.
  - (iv) The Applicant intends to sell the Property for market value or put it up for sale within 3 months of the tenants ceasing to occupy.
  - (v) It is reasonable to grant an eviction order.

### **Reasons for Decision**

14. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to sell the let property. The Tribunal may find that the ground applies if the landlord is entitled to sell the property and intends to sell it for market value or at least put it up for sale within 3 months of the tenants

ceasing to occupy and the Tribunal is satisfied that it is reasonable to issue an eviction order

15. The Tribunal is satisfied that Ground 1 has been established.
16. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondents in terms of the Act.
17. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears are considerable, the Property is subject to a mortgage, and the Respondents are failing to engage regarding rent arrears or their progress in finding alternative accommodation. The Tribunal took into account that the Applicant provided extra time to the Respondents to enable them to find alternative accommodation, prior to making the application, and that he may have been minded to allow even more time were it not for the rent arrears, which are rising steadily.
18. Taking into account the information provided by the Applicant's representative, the Tribunal was concerned that there are two young children in the Property, and that one of the Respondents may not be in employment.
19. The Tribunal considered the representations from the Respondents. The Tribunal noted that the Respondents had given no information as to how they expected to find alternative accommodation by December 2022, and no information as to the reason for rent arrears or their employment status. The Tribunal noted that no information was put forward by the Respondents as to why it would not be reasonable to grant the order, other than their initial understanding that the tenancy would be longer term, and their desire not to disrupt their children's schooling. There was no information before the Tribunal as to any negative effects of a change of school upon the children. The Tribunal considered it unfortunate that the Respondents did not attend the CMD in order to discuss matters fully.
20. The Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant, and that insufficient information had been provided on behalf of the Respondents to shift the balance in their favour. Taking all the circumstances into account, the Tribunal considered that it was reasonable to grant the order sought.

## **Decision**

21. An eviction order in respect of the Property is granted.

## **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.

**H Forbes**

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Legal Member/Chair

12<sup>th</sup> September 2022  
Date