



**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/22/4431

Property : Room 6, 2 The Avenue, Girvan KA26 9DS (“Property”)

**Parties:**

Ian Miller and Elizabeth Miller, Willowdene, London road, St Ives, Cambridgeshire PE27 5EU (“Applicant”)

Thorntons Law LLP, 3<sup>rd</sup> Floor, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (“Applicant’s Representative”)

James Murphy, Room 6, 2 The Avenue, Girvan KA26 9DS (“Respondent”)

Ayr Housing Aid Centre SCIO, 7 York Street, Ayr KA8 8AN (“Respondent Representative”)

**Tribunal Members:**

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property and to dispense with the requirement to serve a charge for eviction in terms of section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 .

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with an inventory of productions with productions numbered 1 - 18. The Application was conjoined with the applications proceeding under reference FTS/HPC/EV/22/4430, FTS/HPC/EV/22/4427 and FTS/HPC/EV/22/4413. A Case Management Discussion (“CMD”) took place on 20 March 2023. Reference is made to the Note of the CMD. A Direction was issued. In response to the Direction the Applicant lodged a third inventory of productions containing items 20 to 34 and a list of witnesses. A Hearing was fixed for 5 September 2023. By email dated 6 July 2023 the Applicant asked the Tribunal to fix an urgent CMD; to grant an order for eviction

under ground 1A; to dispense with the charge for removing under section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 and to dispense with the notice of removal in terms of rule 41C(3) of the Procedure Rules. The Respondent did not oppose part 1 of the application and a CMD was fixed for 7 August 2023. In advance of the CMD the Respondent lodged a copy email dated 3 August 2023 from Dr Philip Hulme and a letter from South Ayrshire Council to the Respondent dated 20 July 2023 regarding his application for housing.

### **CMD on 7 August 2023**

A CMD took place before the Tribunal on 7 August 2023 by teleconference. The Applicant and Calvin Gordon of the Applicant's Representative were in attendance. Gerard Tierney of the Respondent's Representative was also in attendance. Mr Tierney told the Tribunal that the Respondent continued to reside in the Property but was on a list to be rehoused in alternative accommodation. He said that the Respondent's local councillor had become involved. He did not know when alternative accommodation would be made available. He said that the Respondent requires practical assistance. The Tribunal noted the information provided by the Applicant in response to the Direction as regards the establishment of ground 1A and asked Mr Tierney to comment. Mr Tierney said that he had tried to explain to the Respondent the implications of ground 1A being established but he had not received what he would consider to be an informed instruction from the Respondent on the point. In those circumstances he could not concede that ground 1A was established.

Mr Gordon submitted that ground 1A had been established. He said that the sum due under the mortgage was £178,000 and that the monthly payments were now in the region of £1000 per month having been increased several times due to interest rate rises. He noted that the Applicant was also liable for the council tax. He noted that if an order for eviction was granted there was a safety net for the Respondent in that the local authority would be obliged to provide temporary accommodation. He also noted that availability of properties in the private rented sector. He submitted that it was unrealistic for one individual to continue to reside in a 7 bedroom property. The Tribunal asked Mr Tierney about the points allocated to the Respondent for housing. Mr Tierney could not explain why the points were high and suggested there must be a latent vulnerability.

Mr Miller told the Tribunal that his experience of the Respondent did not indicate a vulnerability. He said that the Respondent is capable of working. He told the Tribunal that the situation was extremely stressful for the Applicant.

Mr Gordon submitted that an order for eviction should be granted and that it would be reasonable to dispense with service of a charge for eviction and with the notice of removal due to the length of time that had elapsed since commencement of the

eviction process and the additional cost that would be incurred in having these served by sheriff officer. Mr Tierney asked the Tribunal to fix an evidential hearing in order to determine whether the ground for eviction had been established and to determine the question of reasonableness.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 12 April 2022 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by sheriff officer on 21 July 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 14 October 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 15 December 2022.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
6. The Applicant intends to sell the Property to alleviate financial hardship.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell the let property. The evidence lodged with the application of intention to sell was the affidavit of the First Applicant, the letter from National Auctions, the letter from Kilpatrick & Walker and email from Thomas Murray being productions number 15, 7, 9 and 6 respectively. In those circumstances the ground for eviction had been established.

The Applicant also sought recovery of possession of the Property on the basis set out in Ground 1A which states :

"(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship"

Having considered the third inventory of productions lodged in response to the Direction issued, the Tribunal determined that this ground for eviction was established. In those circumstances the protections afforded by the Cost of Living (Tenant Protection)(Scotland) Act 2022 would not apply. Mr Tierney did not concede that ground 1A had been established and sought an evidential hearing on the point. He was however unable to state to the Tribunal what evidence he proposed to put before the Tribunal at an evidential hearing to persuade the Tribunal that the ground for eviction had not been established.

As regards the question of reasonableness, Mr Tierney referred to the Respondent's "potential" vulnerabilities. The only evidence provided regarding vulnerabilities was the email from Dr Philip Hulme which provided very little information and was not based on a recent assessment of the Respondent. Dr Hulme said he had been unable to contact the Respondent who was an infrequent attender. He said that he had no personal knowledge of the Respondent. He said the records showed no information about capacity or vulnerability.

Having considered all of the circumstances the Tribunal determined that it was reasonable to issue an eviction order and that cause had been shown to dispense with service of a charge for removal. The Tribunal determined not to dispense with service of the notice of removal in terms of rule 41C(3).

### **Decision**

The Tribunal determined to grant an order for possession of the Property and to dispense with the requirement to serve a charge for eviction in terms of section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 .

### **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.**

**Joan Devine**

**Legal Member**

**Date : 7 August 2023**

