



**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/23/0069

Property : 36 Wilson Street, Ayr KA8 9LS (“Property”)

**Parties:**

**Robert McKay, 39 Stark Avenue, Camelon, Falkirk FK1 4PR (“Applicant”)**

**Homesure Portfolio, Unit B5, Olympic Business Park, Drybridge Road, Dundonald KA2 9BE (“Applicant’s Representative”)**

**Jami Aird, 36 Wilson Street, Ayr KA8 9LS (“Respondent”)**

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

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with a Private Residential Tenancy Agreement dated 6 August 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 1 September 2022 (“NTL”) with covering email dated 1 September 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 1 September 2022 and sales agreement between the Applicant and Homesure Portfolio Management dated 9 March 2023. A Case Management Discussion (“CMD”) took place on 1 June 2023. Reference is made to the note of the CMD. The outcome of the CMD was that a further CMD was fixed and the Tribunal issued a Direction. In terms of the Direction the Parties were asked to provide the following information :

The Applicant:

1. A written submission detailing the financial reasons for the Applicant seeking an order for eviction of the Respondent from the Property.

The Respondent :

1. A letter from the Respondent's GP or other health professional explaining the extent of her health issues; why those issues are such that the Respondent should be able to continue in occupation of the Property and the likely impact on the Respondent's health in the event that an order for eviction was granted.
2. A written submission detailing the progress made by the Respondent in discussions with South Ayrshire Council regarding alternative accommodation.

The Applicant's Representative lodged a response to the Direction by email dated 13 June 2023 attaching a copy mortgage statement. The Respondent's Representative lodged a response to the Direction by email dated 12 June 2023 attaching a copy letter from the Respondent's GP dated 9 June 2023.

### **Continued CMD**

A continued CMD took place before the Tribunal on 23 August 2023 by teleconference. Elaine Dunlop of the Applicant's Representative was in attendance. The Respondent was in attendance as was Gerry Tierney of the Respondent's Representative.

Mr Tierney told the Tribunal that no progress had been made by the Respondent regarding alternative accommodation. He said that the background to the rent arrears was being investigated. He said he had explained why the arrears had built up. He said that in the last few months the situation with temporary accommodation in South Ayrshire has become acute. In response to a question from the Tribunal Mr Tierney said that for practical purposes the local authority will not rehouse an individual threatened with homelessness until an order is granted. He emphasised that he was not asking the Tribunal to grant an order.

Mrs Dunlop said that the arrears are £3,664.48 and relate to the period 7 August 2022 to 7 April 2023. She said that the arrears remain static and that the rent is being covered in full by universal credit. Mrs Dunlop told the Tribunal that the Applicant is employed and lives with his partner and family. The Tribunal noted from the mortgage statement provided that the monthly interest being paid by the Applicant had risen from £74.16 in January 2022 to £205.26 in June 2023. Mrs Dunlop said that the Property is the only rental property owned by the Applicant. She said it used to be his home. She said that the mortgage on his current home and all other household bills had gone up. She said that the Applicant's mental health was suffering. She said that the Applicant wished to exit the rental market.

Mr Tierney told the Tribunal that since the CMD the Respondent is now in full time employment as a duty manager in a restaurant. He said that her net income is £1400 / month and that she intends to pay the rent going forward and also pay a contribution towards the arrears. He said that the Respondent feels better working. He said she is supported by her GP and is on medication which is assisting. Mr Tierney said that the Respondent wishes to remain in the Property. He suggested that the Applicant could market the Property with the Respondent as a sitting tenant. He said the Respondent might have the option of family support regarding the arrears. He noted that the Respondent has two elderly cats and a dog aged eight living with her. He said the dog provided emotional support to the Respondent. Mr Tierney noted the letter from the Respondent's GP said that eviction would exacerbate her condition. Mr Tierney noted that the Applicant was not in attendance and said that precluded him from asking the Applicant questions about the urgency of his situation. He said the mortgage on the Property is covered by the rent. Mr Tierney invited the Tribunal to refuse to grant an order. He said his secondary position was that the Tribunal should fix a Hearing.

Mrs Dunlop said that selling the Property with the Respondent as sitting tenant was not an option with interest rates as they currently are and with the arrears history. She noted that the NTL had expired in November 2022 and it is now August 2023. She said that the delay was causing the Applicant stress. She said that financially he cannot continue to support a property in the rental market.

### **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 6 August 2020 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by email on 1 September 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 27 November 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 1 September 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The interest paid by the Applicant for the mortgage on the Property had risen from £74.16 / month in January 2022 to £205.26 / month in June 2023.
6. The Applicant owns one rental property and wishes to exit the rental market.
7. 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.

## **Findings in Fact and Law**

1. In the circumstances, it is reasonable to grant an order for eviction.

## **Reasons for the Decision**

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 he sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy sales agreement with the Applicant's Representative dated 9 March 2023. The Applicant also lodged a mortgage statement which showed that the monthly interest payments had risen significantly. The Applicant's Representative told the Tribunal that the Property is the only rental property owned by the Applicant and that he wishes to exit the rental market. The Tribunal was told that the Applicant could not sustain the cost of a rental property. The Tribunal was satisfied that the ground for eviction had been established.

The Tribunal considered the question of reasonableness taking into account the letter from the Respondent's GP. The Tribunal also took into account the increased costs being met by the Applicant and his desire to exit the rental market. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an eviction order.

## **Decision**

The Tribunal determined to grant an order for possession of the Property.

## **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 : 23 August 2023**

