



**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/21/2246**

**Re: Property at 7B Anderson Crescent, Ayr, KA7 3RL ("the Property")**

**Parties:**

**Mr Gary McCleary, 1 Belvale Crescent, Ayr, KA7 2DR ("the Applicant")**

**Ms Bridget O'Neill, 7B Anderson Crescent, Ayr, KA7 3RL ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

At the Case Management Discussion ("CMD"), which took place by telephone conference 28 April 2022, the Applicant was represented by Mr Norman Fraser, Wallace Hodge & Co. Limited, Solicitors, Ayr. The Respondent was in attendance.

The CMD took place concurrently with the CMD in the related civil case between the parties bearing reference FTS/HPC/CV/21/2247.

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

**Background**

A CMD had previously taken place on 29 March 2022 in this and the related civil application FTS/HPC/CV/21/2247. In this application the Tribunal sought further representations from the Applicant and continued the CMD to today for that purpose.

Prior to the CMD Mr Fraser for the Applicant lodged written Submissions by email dated 19 April 2022.

**The/**

## The CMD

At the CMD Mr Fraser referred to his written submissions and made the following additional oral submissions for the Applicant:-

- i. That, *prima facie*, it is reasonable that an eviction order be granted. It was therefore for the Respondent to persuade the Tribunal that it is not reasonable to grant an order.
- ii. That with regard to the rent arrears, these began to accumulate pre-COVID in January 2020. Once COVID hit it was no doubt difficult for the Respondent to attend her bank to withdraw cash but there was no need for her to do so. A bank transfer of funds could have been made.
- iii. That with regard to reasonableness the Tribunal could have regard to all circumstances relevant to that consideration.
- iv. That with regard to repairs in February 2022 a locksmith attended the Property and was seriously intimidated by Mr Thomas Ward, such that he declined to attend again. It is difficult for the Applicant to manage a property where he cannot be sure a contractor can attend safely. It is reasonable for a landlord to say that he cannot continue with a tenant in these circumstances and that the property should be sold. There had been other previous incidents but the Applicant had been unable to give Mr Fraser "chapter and verse" but had been conscious of the position for some time.
- v. Of the portfolio of 21 properties held by the Applicant and his business partner, Mr Storrie, 9 have been sold, 3 are in the course of being sold, 3 have been identified as properties that Mr Storrie or his family will take over and the remaining 6 - including the Property - will be sold by the end of 2023. Mr Fraser believed his firm may have dealt with some of the sales. It is a priority to sell the Property.
- vi. The Respondent had not said why it would not be reasonable to grant an eviction order. If she needed more time to find alternative accommodation then the Applicant was prepared to give her that. He plans to retire at the end of 2023.
- vii. Mr Fraser could not explain the previous reference by the Respondent at the CMD on 29 March 2022 to the Applicant's statement that he intended to move another tenant into the Property.

At the CMD the Respondent made the following submissions:-

- i. That insofar as finding other accommodation is concerned, the position is much the same as at the CMD on 29 March 2022. She involved an organisation called "Seascapes" just prior to the Notice to Leave expired to assist her in looking for suitable accommodation in the private sector. Nothing was available at the moment.
- ii. With regard to the alleged incident in February 2022 Thomas Ward is her 5 year old son. Her brother is Thomas Wall. When the locksmith attended he was changing only the keyhole lock. The door was not safe and the Respondent had told the Applicant this previously. The Respondent asked for 2 keys to the new lock. The locksmith said he could only give her one key as the Applicant wanted one. The Respondent intimated he did not need a key as he could obtain access at any time when the Respondent was there. The locksmith was not threatened, he left and the Respondent's brother repaired the door frame and replaced the lock.
- iii. The Property is not presently up for sale.
- iv. The only flood affecting the Property was in around January/February 2021 when the toilet of the upstairs occupant leaked and caused water to run into the electrical box in a cupboard in the Property. That situation was resolved. The ongoing damp

is in the corners of bedrooms on the ground floor. Paper is coming off the walls because of the dampness. The Respondent has bought products to treat the dampness but it comes back.

- v. The Respondent lives in the property with her 3 children. The Property has 2 bedrooms and is not adapted. None of her children have special needs.
- vi. The Respondent would be content for an eviction order to be granted if she could have another 6 months to find alternative accommodation.

As the submissions of the parties unfolded there was clear consensus between them that an eviction order could be granted provided enforcement thereof was delayed by a period of 6 months to allow the Respondent a further opportunity to find alternative accommodation.

### **Reasons for Decision**

The Tribunal carefully considered the parties written and oral representations.

The Tribunal accepted that the 2016 Act allowed a landlord to evict a tenant where the landlord intended to sell the property in question subject to the conditions outlined in Schedule 3, Ground 1 being met.

In light of the consensus reached by the parties, it is reasonable to grant the eviction order but to postpone execution of the order to 31 October 2022 under Rule 16A of the First-tier Housing and Property Chamber Rules of Procedure 2017. This allows the Respondent further time to source alternate accommodation but gives the Applicant certainty that possession of the Property will be capable of being recovered in due course.

The Tribunal did not require to hear any further evidence in these circumstances.

### **Decision**

The Tribunal made an order for eviction but postponed execution of the order to 31 October 2022 under Rule 16A of the First-tier Housing and Property Chamber Rules of Procedure 2017.

### **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.**

Gillian Buchanan

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**Legal Member/Chair**

**28 April 2022**

**Date**