



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/2770**

**Re: Property at 7 Berryhill Avenue, Irvine, Ayrshire, KA11 1QP (“the Property”)**

**Parties:**

**edb Aviation Services, 11 Overdale Crescent, Prestwick, Ayrshire, KA9 2DD (“the Applicant”)**

**Mrs Ruth Melvin, 7 Berryhill Avenue, Irvine, Ayrshire, KA11 1QP (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

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

**Background**

1. By application received on 15 August 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 4 of Schedule 3 to the 2016 Act (landlord intends to live in the let property). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and proof of service of same and background information and documentation in support of the ground of eviction.

2. Following additional procedure, on 4 October 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 29 November 2023 was served on the Respondent by way of Sheriff Officer on 25 October 2023. In terms of said notification, the Respondent was given until 10 November 2023 to lodge written representations. No written representations were lodged by or on behalf of the Respondent, although CHAP emailed the Tribunal Administration on 15 November 2023 to advise that they would represent the Respondent at the CMD.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 29 November 2023 at 2pm, attended by Mr Edwin Boyce on behalf of the Applicant and Mr Alister Meek of CHAP on behalf of the Respondent.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the Respondent’s position in relation to it. Mr Meek explained that the Respondent does not oppose the application and, indeed, if an order is granted, this will assist her housing application with the local authority. Mr Meek confirmed that he was attending the CMD to answer any questions that the Tribunal may have regarding the Respondent’s position.
6. The Legal Member explained that, even where an application is not opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
7. Mr Boyce was asked initially to clarify the position regarding the Applicant, edb Aviation Services, given that the title to the Property is in the name of this limited company, whereas the tenancy agreement is in the name of Mr Boyce’s wife as landlord and the Landlord Registration information produced names Mr Boyce. He confirmed that he is the sole director of edb Aviation Services and explained that the title to the Property was previously in his wife’s name and was transferred into the name of the company in recent months. At the time the tenancy was entered into, the title was in his wife’s name and this is why she is named as landlord.
8. Mr Boyce confirmed that he was hopeful that the eviction order would be granted today. When he explained the background to the application, it became apparent that the circumstances of he and his wife had changed, during the time the eviction process has been ongoing. It had initially been their intention to move back into the Property and live there once the Respondent had vacated and the Notice to Leave and application had been drafted with that in mind.

However, the lease on the property they were residing in in Altrincham following their return from living abroad for several years came to an end on 27 July 2023. They had initially thought that they would be back in possession of their own Property by then but, when it became apparent that this was not going to be the case, they required to buy another property in Scotland to live in, at 11 Overdale Crescent, Prestwick. This has cost them a lot of money and their finances are such that they now need to sell the Property as soon as possible. They therefore do not now intend to live in the Property themselves. The Legal Member explained that, in these circumstances, eviction Ground 4 in terms of the legislation, was not met. Mr Boyce referred to his written representations lodged with the Tribunal throughout and that he thought he had explained this change in circumstances. He confirmed that he would like to amend the eviction ground to Ground 1 (landlord intends to sell). There was some discussion concerning the requirements for a Ground 1 eviction and Mr Boyce confirmed that it was their intention to market and sell the Property as soon as they possibly can, as they have to for financial reasons. They have not yet instructed an estate agent or solicitor with regard to the marketing or sale as they were aware that they would need to recover the Property first. Mr Boyce referred to the supporting documentation and representations lodged in support of the application and considers that this establishes the background circumstances and why they now require to sell. Mr Meek was asked for his views on this matter and he confirmed that there was no objection to the application being amended in this way and they do not wish to take any issue with anything Mr Boyce has said regarding the eviction ground.

9. The Tribunal Members decided to have a brief adjournment to consider the application by the Applicant to amend the eviction ground. On re-convening, the Legal Member confirmed that, in the absence of any objection on behalf of the Respondent, the Tribunal was prepared to amend the application in terms of the eviction ground being relied upon and proceed with consideration of the application on the basis of Ground 1.
10. The Tribunal then asked to be addressed on the question of the reasonableness of the eviction order sought being granted. Mr Boyce referred to the background circumstances concerning this Property. He explained that, although he and his wife were living abroad, they wanted to have a property in Scotland to return to and they purchased this Property from their own son. The tenancy with the Respondent had come about as a favour as Mr Boyce was approached by someone he knew who explained that the Respondent had had a relationship breakdown and was desperate to find somewhere to stay. They felt sorry for the Respondent and entered into the tenancy agreement with her at the start of 2022. However, he feels that she has taken advantage of the situation as it was always understood that she would move out of the Property when they needed it back and then she failed to do so. There have been lots of delays with the process, which has been very frustrating, and he considers that the Respondent has been using the system to stay put. This has had financial implications for them, as already referred to, and they were essentially forced to purchase a property in Scotland to live in as they had nowhere else to go when their own tenancy in England came to an end and required to return to Scotland for work purposes. Mr Boyce stated that they themselves were

technically homeless for a few weeks between their lease ending on 27 July and their purchase of the new property on 8 August 2023. Mr Boyce advised that he and his wife required to stay with friends during that period. Mr Boyce confirmed that he and his wife do not let out any other properties. As to the Respondent's circumstances, Mr Boyce considers that, as she is working, the Respondent should have been able to secure an alternative private rented property for herself, rather than waiting for local authority housing to be offered.

11. Mr Meek stated on behalf of the Respondent that she lives alone, has no children and no particular health issues or vulnerabilities. She does wish to secure social housing and has been in contact with North Ayrshire Council throughout. The local authority would not start the process until the Respondent had been served with a valid notice, which she was not originally. She has then had to wait for the Tribunal process to go through and, if an eviction order is granted, her housing application will be able to progress. CHAP will continue to support her through this process and think that she should have a relatively short wait for housing, as she only requires a one-bedroom flat.
12. The Tribunal Members, having considered matters, confirmed that the eviction order will be granted. The process to follow was discussed including the timescales for the order being granted and for enforcement of the order, given the delay on evictions currently in place in terms of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA"). Mr Boyce indicated that he was concerned about that but would have to accept the position as he understood the Legal Member's explanation that the Tribunal had no discretion in this matter. It was explained that, if the Respondent was able to secure alternative accommodation earlier, it may be possible for parties to agree an earlier date for the Respondent to vacate the Property voluntarily, but that this was not something that the Tribunal would be involved in.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 3 January 2022.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property as soon as vacant possession is obtained.
5. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email on 19 May 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 14 August 2023.

7. The Tribunal Application was submitted on 15 August 2023.
8. The Respondent did not oppose the application.

### **Reasons for Decision**

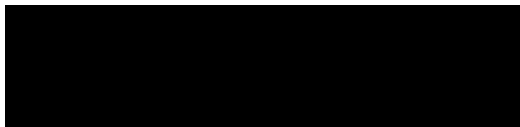
1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by Mr Boyce for the Applicant and Mr Meek for the Respondent.
2. The Tribunal had considered the Applicant's oral request at the CMD to amend the application by changing the ground of eviction from Ground 4 to Ground 1, in terms of Rule 14 of the Regulations (amendment raising new issues). The Tribunal noted that there was no opposition on behalf of the Respondent to this and consented to the amendment. In doing so, the Tribunal had regard to the overriding objective to deal with the proceedings justly and, given both parties positions in relation to the matter, considered that it was proportionate and demonstrated flexibility in approach and avoided further unnecessary delay, all in terms of Rule 3. It was noted also from the background papers that Mr Boyce had notified the Tribunal of the change in the Applicant's circumstances in an email dated 16 August 2023 and that this email would have been intimated to the Respondent in advance of the CMD by virtue of being incorporated in the case papers served upon her.
3. The Tribunal found that the application (as amended) was in order, that a Notice to Leave in proper form (although stating eviction Ground 4 rather than Ground 1) and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act. The Tribunal noted that, due to the timing of the Notice to Leave being served on the Respondent (19 May 2023), Ground 4 was stated therein, rather than Ground 1. That reflected the Applicant's circumstances at that time, which subsequently changed. Having regard to Section 52 of the 2016 Act, the Tribunal considered it to be reasonable and in accordance with the overriding objective, as per paragraph 2 above, to exercise the discretion available to the Tribunal in Section 52(5)(b) and to consider the application in terms of eviction Ground 1, despite that ground not being included in the Notice to Leave. Notice periods were the same in respect of both grounds and both are caught by the COLA provisions.
4. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application, supplemented by the oral submissions made at the CMD by Mr Boyce, which supported the Applicant's position that Mr and Mrs Boyce now

require to sell the Property to release the equity in the Property. This is required to improve their financial situation, having recently unexpectedly required to purchase an alternative property to live in when their own lease in England came to an end and it had become apparent that they would not have vacant possession of this Property. The Respondent did not oppose the application and has already been in contact with the local authority, with the support of her representatives, CHAP, regarding seeking alternative accommodation. The Respondent's representative had indicated that the granting of an order would, be likely to prioritise the Respondent's housing application. The Tribunal is aware that, in granting the order today, that there will be a delay of some months before the order can be enforced, in terms of the COLA protections, which should provide the Respondent a further opportunity to secure alternative housing meantime. In all these circumstances, the Tribunal considered it reasonable to grant the eviction order.

5. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

### **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/Chair**

**29 November 2023**

**Date**