



**The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/23/2254**

**Re: Property at 40 West Main Street, Uphall, Broxburn, EH52 5DW (“the Property”)**

**Parties:**

**Ms Patricia Hartey, 2 Cochrane Street, Bathgate, EH48 4JQ (“the Applicant”) per her agents, Landlord Agents Limited, 5 South Charlotte Street, Edinburgh, EH2 4AN (“the Applicant’s Agents”)**

**Mr Darren John Charles Robertson, 40 West Main Street, Uphall, Broxburn, EH52 5DW (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Background**

1. By application received between 6 July 2023 and 1 November 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
  - i) copy private residential tenancy agreement between the Parties;
  - ii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to West Lothian Council being the relevant local authority and
  - iv) copy emails from House Spotters, Estate Agency, confirming instructions to sell the Property when vacant possession is obtained.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 8 January 2024 at 11.30 by telephone

conference. The CMD was intimated to the Parties and, in particular, to the Respondent by Sheriff Officer service on 14 November 2023.

#### **CMD**

4. The CMD took place on 8 January 2024 at 11.30. The Applicant was not present and was represented by Mr. J. Livingstone of the Applicant's Agents. Mr. Robertson, the Respondent, was present and unrepresented.
5. Mr. Livingstone for the Applicant confirmed that the Order is sought. He explained that the Applicant's reasons for selling are that her mortgage on the Property is an interest only mortgage backed by an endowment policy. The mortgage has come to term and there is a deficit of around £27,500.00 on the policy and so the Applicant has no option but to sell the Property to cover the sum due to the mortgage company. Mr. Livingstone stated that the Applicant is a retired person and that her only income is her state pension. He stated that she does not own any other rental properties.
6. Mr. Robertson, the Respondent, stated that he did not formally oppose the Application but had been unable to secure alternative accommodation and so remained in the Property on the advice of the local authority. He stated that he lived alone and that he had been in contact with the local authority for advice and assistance on homelessness but they are not able to offer anything until the Order is granted. He advised the Tribunal that he is not employed and is in receipt of housing benefit.

#### **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a private residential tenancy of the Property between the Parties which began on 9 April 2019;
  - ii) The Applicant has a mortgage secured on the Property which is interest only and falls to be repaid;
  - iii) The Applicant has insufficient funds to repay the mortgage;
  - iv) The Applicant requires to sell the Property to repay the mortgage;
  - v) The Applicant intends to sell the Property and has instructed selling agents;
  - vi) The correct statutory procedures have been carried out;
  - vii) The Respondent is a single person and has not been able to source alternative accommodation and
  - viii) The Respondent does not formally oppose the Application but has no alternative accommodation in which to reside and so continues to reside in the Property.

#### **Issue for the Tribunal**

8. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *"It is an eviction ground that the landlord intends to sell the let property. (2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it and (c)the*

*Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”*

9. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

#### **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
12. The Tribunal had regard to the facts that the Applicant’s mortgage on the Property falls to be repaid and that the Applicant requires to sell the Property with vacant possession to do so. The Tribunal had regard to the Respondent’s circumstances and took the view that the homelessness legislation provides a safety net for him. Further, the effect of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is such that any Order cannot be enforced until 31 March 2024 and so the Respondent has a significant period of time to secure housing. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
13. This decision is unanimous.

#### **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.**

**Karen Moore**

**08/01/2024**

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**Legal Member/Chair**

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**Date**