



**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/22/2201**

**Property : Flat C, 6 Glenraig Street, Airdrie ML6 9AR (“Property”)**

**Parties:**

**Lee-Ann Simpson, 5 Centenary Avenue, Airdrie ML6 OBE (“Applicant”)**

**Ritehome Ltd, 350 Glasgow Harbour Terrace, Glasgow G11 6EG (“Applicant’s Representative”)**

**Mari Quinn, Flat C, 6 Glenraig Street, Airdrie ML6 9AR (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Jane Heppenstall (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. The documents produced were: Tenancy Agreement dated 24 and 25 May 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 5 April 2022 (“Notice to Leave”); Royal Mail proof of delivery on 8 April 2022; email to the Respondent dated 5 April 2022 attaching Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 6 July 2022; email from the Applicant to the Applicant’s Representative dated 23 February 2022 regarding the sale of the Property; letter from the Applicant’s Representative dated 3 August 2022 stating they are instructed to sell the Property and sheriff officer’s execution of service certifying service of the Application on 20 October 2022. The Tribunal had sight of a search showing that the Applicant holds title to the Property in her maiden name along with a copy marriage certificate.

### **Case Management Discussion on 29 November 2022**

A case management discussion (“CMD”) took place before the Tribunal on 29 November 2022 by teleconference. In advance of the CMD the Respondent lodged a written representation from Jim Melvin of Coatbridge CAB. Reference is made to the note of the CMD dated 29 November. The outcome of the CMD was that the Tribunal issued a Direction and a continued CMD was fixed for 14 March 2023.

In terms of the Direction the Applicant was required to lodge :

1. A written representation setting out the expected timescale for her moving to Shetland; the reasons for the Applicant being unable to afford to maintain the Property as a rental property and the reasons for the Applicant requiring to sell the Property as well as the property in which she resides in order to facilitate a move to Shetland.
2. A copy of any documents that the Applicant seeks to rely upon in support of the written representation referred to above.

The Direction also stated :

*The Respondent should note that at the continued case management discussion the Tribunal will require to be addressed on the progress of the homeless persons application made by the Respondent to the local authority.*

On 15 December 2022 the Applicant lodged a written representation dated 7 December 2022 explaining her cancer diagnosis, the treatment she had received and was receiving as well as her reasons for wishing to sell the Property. The Applicant also lodged a number of copy letters from NHS Greater Glasgow and Clyde, NHS Lanarkshire and the Beatson regarding her cancer treatment.

### **Case Management Discussion on 14 March 2023**

A CMD took place before the Tribunal on 14 March 2023 by teleconference. Robert Nixon of the Applicant’s Representative and the Respondent were in attendance.

The Tribunal asked the Respondent about the progress of her homeless persons application to the local authority. The Respondent said that the application was stagnant and remained as it was at the CMD in November 2022. She said that she was “on a list”. She said that the local authority contacted her around once per month to ask when the Tribunal was next meeting to discuss the application. She said that the local authority seem to take notes but often they are then lost. The Tribunal asked the Respondent about her son’s situation. She said that it had not changed. She said

that he has autism and will have for all of his life. She said that he is 13 years old. She said that her 18 year old son continues to live with her. He is at college.

The Tribunal asked the Respondent if she thought that the local authority understood her son's health needs. She said she thought that they did but were overwhelmed with people looking for housing. She said that she had explained her son's health issues in the paperwork submitted and in discussions with the local authority. The Tribunal asked the Respondent if she has one dedicated case worker. She said that there is one person at the local authority who keeps in touch with her. She said that they had explained the "points system" to her. She had asked for the information to be provided in her writing. No letter had arrived so she had followed that up recently. The Tribunal asked the Respondent if the local authority accepted that she was threatened with homelessness. The Respondent said that the local authority keep telling her that they need to find out the Tribunal's ruling. The Respondent said that she assumed that they would then make arrangements for a homeless unit.

The Tribunal asked Mr Nixon if there was anything he wished to add to the written representation lodged by the Applicant. He said that the Applicant intended to sell the Property in order to wind up her affairs and possibly to facilitate the purchase of a property in Shetland. He said that the Applicant was sympathetic to the Respondent's position but in her current situation she needed to focus on what is best for her.

The Tribunal explained that it could proceed to make a decision based on the information provided by the Parties or the tribunal could fix a Hearing if Parties were of the view that there was further information that should be placed before the Tribunal. Mr Nixon said that there was no further information to be provided by the Applicant. The Respondent said that she had no further information to provide. She said that she felt awful about the Applicant's situation. She said that she would not be opposing the application if she was had not run out of options.

The Tribunal noted that there were no factual issues in dispute between the Parties and expressed the view that they had sufficient information to allow them to proceed to a determination. The Tribunal told the Parties that they would adjourn and issue a written decision.

### **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 which commenced on 25 May 2021 ("Tenancy Agreement").

2. A Notice to Leave was served on the Respondent by recorded delivery post on 8 April 2022 and by email on 5 April 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 1 July 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 6 July 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.

### **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 she 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 of an email from the Applicant to the Applicant's Representative dated 23 February 2022 in which she stated her intention to sell and a letter from the Applicant's Representative dated 3 August 2022 stating they are instructed to sell the Property. The Applicant lodged a written representation dated 7 December 2022 in which she explained her terminal cancer diagnosis. She explained that she wished to tidy up her affairs. She said that she wanted to progress her wish to purchase a property in Shetland and in any event she wished to be freed of the constraint of being a landlord. In those circumstances the ground for eviction had been established.

The Tribunal carefully considered the written representation from the Applicant and the oral submissions from the Respondent as regards the question of whether or not it would be reasonable to grant an order for eviction. The Tribunal recognised that both Parties are in a very difficult situation. The Applicant had explained in her written representation the details of her cancer diagnosis and the treatment she had undergone. She had told the Tribunal that in February 2021 she was told that her diagnosis was terminal and that she had at most 5 years to live. In her written representation she told the Tribunal that she wished to spend however long she had left free of the constraint of being a landlord and able to look at the possibility of a property in Shetland when the time was right. Whilst the Tribunal understands the challenges that the Respondent and her son will face if an order for eviction is granted,

the local authority have a statutory duty to provide accommodation in the event of a family being made homeless and they would require to consider the particular needs of the Respondent's son. As the Respondent told the Tribunal, her son will require to live with his diagnosis of autism for the rest of his life.

In all the circumstances the Tribunal determined that it was reasonable to grant an order for eviction but to delay execution of the Order for a period of 7 days as the date for execution would otherwise fall during the Easter break when the local authority may be less responsive to dealing with the Respondent's homeless person application.

### **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

Joan Devine  
Legal Member

Date : 14 March 2023