



**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/22/3511**

**Re: Property at 10 Drimnin Road, Cardowan, G33 6AT (“the Property”)**

**Parties:**

**Mr Brendan Joseph Higgins, 11 Holmhead Terrace, Kirkconnel, Sanquhar, DG46 6LZ (“the Applicant”)**

**Miss Carly Logan, 10 Drimnin Road, Cardowan, G33 6AT (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Nick Allan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1A under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.**

- Background
  1. An application dated 21 September 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
  2. A Case Management Discussion (“CMD”) took place on 6 March 2023 by conference call. The Applicant was personally present and represented by his

agent, Paul Graham of Prospect Property Factors Ltd. The Respondent was personally present and represented herself.

3. Prior to the CMD, a letter had been issued to the Applicant's representative advising him that his application was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and asking if the Applicant wished to proceed with his application as originally submitted, or if he wished to amend the ground being relied upon. The Applicant's representative confirmed that the Applicant wished to amend the ground being relied upon to Ground 1A, where the landlord is selling the property to alleviate financial hardship.
4. At the CMD, the Applicant's representative confirmed that he wished to amend the ground being relied upon to ground 1A, and he moved for the Order to be granted on that basis. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"). The Applicant intended to sell the Property to alleviate financial hardship and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 21 September 2022. The Applicant's representative submitted that the Respondent had been aware since January 2022 of the Landlord's requirement to sell the Property. There is a buyer but they cannot complete the sale until there is vacant possession.
5. The Applicant submitted that he cannot afford to keep the Property rented out. The Property is due to be re-mortgaged, but the interest rates have increased. The costs associated with the rental are too much for the Applicant and his wife. His wife has reduced her hours of work and the Applicant is the main earner in the household. The current mortgage payment is £177 per month and this will increase soon as the mortgage will revert to a variable rate. The Applicant submitted that he had other debts which also needed to be paid off from the sale proceeds.
6. The Respondent submitted that she wished to leave the Property and had sought advice from the local authority on her housing options. She has a two-week old baby. She is on the local authority's waiting list and they have advised that if an order is granted they will be able to rehouse her, at least in homeless accommodation. The Respondent confirmed that she did not mind being offered temporary homeless accommodation meantime, and simply wanted to leave the Property but had nowhere currently to go to.
7. The following documents were lodged alongside the application:
  - (i) Copy Notice to Leave;
  - (ii) Evidence of receipt of the Notice to Leave from the Respondent;
  - (iii) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003;
  - (iv) Email from Carey Hughes confirming instruction re sale of the Property;
  - (v) Copy disposition concerning proposed sale of the Property;
  - (vi) Copy text messages between the Respondent and Applicant's agent.

- Findings in Fact

8. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant is entitled to sell the Property;
- (iv) The Applicant is suffering financial hardship;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (vi) The Applicant has provided evidence of a solicitor being instructed in the sale of the Property.

- Reasons for Decision

9. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to sell the property and intends to do so within 3 months of the Respondent ceasing to occupy it. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was also satisfied that under the circumstances, and in particular taking into account the Respondent's views, that it was reasonable to allow amendment of the ground being relied upon to Ground 1A, in that the landlord intends to sell the property to alleviate financial hardship. The Tribunal was satisfied that there was no defence being stated by the Respondent and that she wished to be rehoused by the local authority and that an order being granted will likely assist in that process taking place sooner.

- Decision

10. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1A under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

## **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.**

# F Watson

**Legal Member/Chair**

**Date: 6 March 2023**