



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Scotland (“Act”) 2016**

**Chamber Ref: FTS/HPC/EV/23/2089**

**Re: Property at 20 Michael Terrace, Chapelhall, Airdrie, ML6 8TQ (“the Property”)**

**Parties:**

**Ms Lindsay Thomson, 58 Martyn Street, Airdrie, ML6 9AU (“the Applicant”)**

**Ms Caroline Maria Costello, 20 Michael Terrace Chapelhall, Airdrie, ML6 8TQ (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision:**

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

**Background**

1. This is an application by the Applicant for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicant to the Respondent commencing on 10<sup>th</sup> April 2018.
2. The application was dated 23<sup>rd</sup> June 2023 and lodged with the Tribunal on or around that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.

3. The application relied upon a Notice to Leave dated 2<sup>nd</sup> March 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by Signed For (recorded delivery) post on 3<sup>rd</sup> March 2023, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 29<sup>th</sup> May 2023.
4. The application papers included a copy of an agreement between the Applicant and Abode Estate Agency dated 25<sup>th</sup> May 2023 showing that the Applicant had instructed Abode Estate Agency to proceed to market and sell the Property.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon North Lanarkshire Council on 23<sup>rd</sup> June 2023 was included in the application papers.

## The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 23<sup>rd</sup> October 2023 at 1400.
7. The Applicant did not join the conference call, but was represented on the call by Mr David Phinn, Solicitor of Messrs Samuel Hill Brown.
8. The Respondent joined the conference call.
9. At the CMD, the Applicant’s solicitor confirmed that the application for eviction was insisted upon. He explained that the Applicant had decided to sell the property as she did not consider that the ongoing rental of the property was financially viable. The Applicant does not rent out any other property. The Applicant has instructed Abode Estate Agency to sell the Property. The Applicant’s solicitor confirmed the Applicant continues to seek an order for eviction notwithstanding that such an eviction order will be suspended until March 2024 in terms of the 2022 Act.
10. The Respondent confirmed to the Tribunal that she had no reason to doubt that the Applicant intended to sell the Property. She did not wish to object to the grant of the eviction order being sought.
11. We asked both parties to address us further on reasonableness. There was no dispute between the parties as to any of the information given in this respect. We were informed that:
  - a. The Respondent lives at the Property with her 10 year old son.
  - b. The Respondent has applied to the local authority for alternative housing and understands that she has the necessary housing points to be made an offer of housing by that local authority. She further understands that

an offer of rehousing will not be made by the local authority unless there is an order in place which requires her to remove from the Property.

- c. On that basis the Respondent does not wish to contest the Application and agrees that it is reasonable that an order for eviction is granted.
- d. The Applicant wishes to sell the Property for financial reasons. She no longer wishes to be a landlord. She wishes to recover the Property to allow her to sell it. She does not consider that it is financially viable to continue with the lease of the Property.

## **Findings in Fact**

12. On 10h April 2018 the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
13. Notice to Leave was posted to the Respondent by signed for post on 3<sup>rd</sup> March 2023.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 part 1 of the 2016 Act on or around 23<sup>rd</sup> June 2023.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon North Lanarkshire council on the Applicant’s behalf on 23<sup>rd</sup> June 2023.
20. The Applicant has instructed Abode Estate Agency to market and sell the Property.
21. The Applicant intends to sell the Property, and it is reasonable that an order for eviction is granted

## **Reasons for Decision**

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
24. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1.)...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.
  - (2) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) –
    - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
    - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.
25. The Applicant has engaged agents to sell the Property. She has entered into an agreement with Abode Estate Agency as to the terms and conditions of estate agency services in connection with the property. The Applicant wishes to sell the Property as she no longer considers that it is financially viable to let the Property. We were satisfied on the evidence that the Applicant has a genuine intention to sell the property and that Ground 1 of Schedule 3 to the 2016 Act had been established. The Respondent accepted that this was the position.
26. The Tribunal also considered whether it was reasonable to issue an eviction order.

The Tribunal accept that the Applicant wishes to sell the Property as it is no longer financially viable for them to continue to let this property.

The Respondent does not wish to oppose the Application. She wishes the order to be granted to allow her to move forward with her application for alternative housing with the local authority. She would prefer to move a different part of Airdrie which would be closer to her own social and support network. In the event that an order for eviction is granted the Respondent is likely rehoused by the local authority. The provisions of cost of Living (Tenant Protection) (Scotland) Act 2022 mean that an eviction order granted by the Tribunal is unlikely to be capable of enforcement prior to March 2024, during which time the Respondent will have further opportunity to secure alternative accommodation.

In all the circumstances the Tribunal are satisfied that it is reasonable to grant an order for eviction,

30. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time, but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion:
- Not to be executed prior to 12 noon on the earlier of:
      - a. the day following the end of a period of 6 months beginning the date of our order or
      - b. the date of the expiry or suspension of Paragraph 1 of Schedule 2 of the cost of Living (Tenant Protection) (Scotland) Act 2022.

## **Decision**

- 31.** In all circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 Act and the appeal period of this Decision

## **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** —

**Date 23<sup>rd</sup> October 2023**