



**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/23/2273**

**Property : 27 Woodside Road, Glenrothes KY7 4DP (“Property”)**

**Parties:**

**Blackmoon Lighting Ltd, Unit 8 Dryden Place, Loanhead EH20 9HP (“Applicant”)**

**Gilson Gray LLP, 29 Rutland Square, Edinburgh EH1 2BW (“Applicant’s Representative”)**

**Michelle Ness and Steven Gray, 27 Woodside Road, Glenrothes KY7 4DP (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Tony Cain (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: Private Residential Tenancy Agreement dated 20 April 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 17 February 2023 ("Notice to Leave"); sheriff officer’s certificate of service of the Notice to Leave on 20 February 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 7 July 2023; copy email from Lindsay Darroch, Partner at the Applicant’s Representative confirming he is instructed to proceed with the sale of the Property and sheriff officer's execution of service certifying service of the Application on 23 October 2023.

## **Case Management Discussion**

A case management discussion (“CMD”) took place before the Tribunal on 29 November 2023 by teleconference. The Applicant was represented by David Gray of the Applicant’s Representative. The Respondent was not in attendance.

On the morning of the CMD the First Respondent sent an email to the Tribunal in which she stated “*I am kindly asking this can be postponed until at least February 2024. I am in contact with Fife Council to have my suspension lifted from the housing list by this time.*” The email went on to explain that the First Respondent had two sons aged 13 and 15 with mental health issues. She said she did not wish to disclose the details. It was unclear to the Tribunal whether the First Respondent sought a postponement of the CMD or a postponement of the enforcement of any order for possession. Neither Respondent joined the CMD to clarify.

Mr Gray told the Tribunal that the Applicant had not had any contact from the Respondent for around one year. He said the Applicant had given up trying to make contact. He said the rent arrears were just short of £10,000. The Tribunal asked if any payments were made via housing benefit. Mr Gray said that one payment of £620 had been received in October 2023. Mr Gray said he understood that the Respondent lived in the Property with two children. He said the Applicant did not know their ages and was unaware of any health issues. Mr Gray told the Tribunal that the Applicant required to sell the Property in order to inject money into a business. He said that the director of the Applicant was having to step away from the business to care for his wife who had been diagnosed with leukemia

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property dated 20 April 2018.
2. A Notice to Leave was served on the Respondent by sheriff officer on 20 February 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 16 May 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 7 July 2023.
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**

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 they 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 Lindsay Darroch, Partner at the Applicant's Representative confirming he is instructed to proceed with the sale of the Property. The Tribunal considered the evidence provided and determined that the ground for eviction had been established.

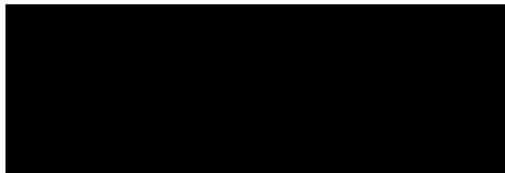
As regards the question of reasonableness, the Tribunal considered the oral representations of the Applicant's Representative as well as the information contained in the email from the First Respondent received on the morning of the CMD. The Tribunal was mindful that any order for possession would be subject to a delay in enforcement in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022. In those circumstances and, in the absence of a submission from the Respondent, aside from the email received, the Tribunal determined that it was reasonable to grant an order for eviction.

## **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  
Legal Member**

**Date: 29 November 2023**