



**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/23/2666**

**Re: Property at 91 John Street, Penicuik, Midlothian, EH26 8AG (“the Property”)**

**Parties:**

**Mr Marcus Ballantine, 22 Martin Street, Edinburgh, EH17 8GB (“the Applicant”)**

**Mrs Angela Whyte, 91 John Street, Penicuik, Midlothian, EH26 8AG (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.**

**Background**

1. This is an application for an eviction order made in the period between 7<sup>th</sup> August and 1<sup>st</sup> September 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) under ground 1 of Schedule 3 of the Act. The Applicant lodged a copy of the private residential tenancy agreement between the parties, which commenced on 25<sup>th</sup> May 2021, evidence of intention to sell, section 11 notice with evidence of service, and copy notice to leave with evidence of service.

**The Case Management Discussion**

2. A Case Management Discussion (“CMD”) took place by telephone conference on 14<sup>th</sup> December 2023. The Applicant was not in attendance and was represented by Ms Caroline Gourlay, Rent Locally. The Respondent was in attendance.

**The Applicant’s position**

3. Ms Gourlay said the Applicant wished to be granted an eviction order. He has two properties for let and wishes to sell them both and exit the property market due to financial hardship caused by rising mortgage costs. Responding to questions from the Tribunal, Ms Gourlay said there is no particular urgency for the Applicant to sell at this time.

### **The Respondent's position**

4. The Respondent explained that she lives at the Property with her 18-year-old daughter. She explained their employment and health circumstances. She said the private rented housing market is now too expensive for her. After receiving the Notice to Leave, she took advice from the CAB and has been in discussion with the local authority about social housing. She has been told that she will not get housing unless an order is granted. The Respondent said she has been told she and her daughter are likely to be provided with temporary accommodation until permanent housing becomes available. This will be unsettling for them. The Respondent said the Property is not ideal for her, as it is damp. She would like to obtain social housing.
5. The Respondent said she does not wish to be awkward, as the Applicant has been a great landlord and she has no argument against him selling the Property. The Tribunal explained that it is tasked with considering whether it is reasonable to grant an eviction order, and it must take into account all the relevant circumstances. The Tribunal explained the possible courses of action open to it, including fixing a hearing on reasonableness, granting the order, or refusing the order. The Respondent said she wished the order to be granted, stating that, if it was not granted, she would not get social housing.

### **Findings in Fact and Law**

6.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 25<sup>th</sup> May 2021.
  - (ii) Notice to Leave has been served upon the Respondent.
  - (iii) The Applicant is entitled to sell the Property.
  - (iv) The Applicant intends to sell the let property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the Property.
  - (v) The Respondent resides at the Property with her 18-year-old daughter.
  - (vi) The Respondent is in discussion with the local authority regarding alternative social housing.
  - (vii) It is reasonable to grant an eviction order.

## Reasons for Decision

7. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to sell the let property. The Tribunal may find the ground met if the landlord is entitled to sell the property and intends to do so for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it. The Tribunal was satisfied that Ground 1 had been established.
8. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act. The requisite section 11 Notice has been served upon the local authority.
9. In considering whether it was reasonable to grant the eviction order, the Tribunal took into account the representations made on behalf of both parties. The Tribunal considered it would have been preferable to have been provided with further details of the Applicant's circumstances in respect of reasonableness, noting that the Applicant wishes to exit the property market, but has no particular urgent need to sell at this time.
10. The Tribunal considered the Respondent's position, including health issues which may be impacted upon by the upheaval of eviction, particularly if temporary accommodation is provided initially. The Tribunal took into consideration the Respondent's representations that social housing would suit her better financially, the fact that if no order was granted, she would not be allocated social housing, and the fact that the Property is not ideal, due to dampness.
11. In all the circumstances, the Tribunal considered it was reasonable to grant an eviction order.

## Decision

12. An eviction order in respect of the Property is granted. The order is 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 with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## 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**

**14<sup>th</sup> December 2023**

**Date**