



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/2917**

**Re: Property at 9 Heathwood Drive, Glasgow, G46 7BP (“the Property”)**

**Parties:**

**Mr Mordecai Bamberger, 86 Hillside Road, London, N15 6NB (“the Applicant”)**

**Ms Elizabeth MacIntyre, 9 Heathwood Drive, Glasgow, G46 7BP (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent and in favour of the Applicant in terms of Ground 1 of Schedule 5 of the Private Housing (Tenancies) Scotland Act 2016 in that the Applicant intends to sell the let property or at least put it up for sale within three months of the tenant ceasing to occupy it and it is reasonable on account of those facts to grant the order.

**Background**

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 24<sup>th</sup> August 2023 and accepted by the Tribunal on 20<sup>th</sup> October 2023.A case management discussion was fixed for 17<sup>th</sup> January 2023 at 2pm.

**Case Management Discussion**

2.The case management discussion was attended by Miss McLellan and Mr Livingstone of Douglas Dickson Property Management Limited, on behalf of the Applicant and the Respondent attended and represented herself.

3.The Tribunal had sight of the application, a tenancy agreement, a Notice to leave and email sending this to the Respondent, a notice in terms of section 11 of the Homelessness etc (Scotland ) Act 2003 together with an email sending this to the local authority on 23<sup>rd</sup> August 2023, some e mails, a valuation for the property in November 2023, and mortgage information.

4.The parties had first entered into a tenancy agreement at the property in April 2012.A new private residential tenancy agreement was signed by parties and started with effect from 11<sup>th</sup> March 2023.Neither party had a copy of the previous tenancy agreement and they had agreed to create a new private residential tenancy at this time.

5.Miss McLellan on behalf of the Applicant advised that the landlord wanted to sell the property as it is costing him £300 per month more than the rental income it achieves. The landlord had submitted representations regarding the amount of his monthly mortgage payment which was said to have risen from £265 in January 2022 to £381 in July 2022. There had been further rises and in January 2023 the mortgage was £634 per month and is now £889 per month. The Applicant noted that the monthly rent is £650 per month and as a result he was losing money each month the property was rented. Adding on the costs which he has for insurance, repairs and maintenance he was of the view that the shortfall between the costs and the rent is £ 3500 in a year. The Applicant is of the view that he has no alternative but to sell the property. A valuation had been instructed in November 2023 and since then a surveyor had attended the property to carry out a survey. She indicated that the Applicant is keen to move forward with a sale as soon as he can.

6.The Respondent accepted that she had signed a new tenancy , received a Notice to Leave and took no issue with the procedures adopted in this application. She did not oppose an eviction order being granted and expressed that she would be happy to move out, but her concern was that she had not found anywhere else to live at the time of the case management discussion. The Respondent explained that she had been on a housing waiting list for 15-20 years. She had approached housing associations, citizens advice, the Homelessness section of the council and she been bidding on houses and had been told that she would receive priority for housing if she was evicted.

7.The Respondent advised that she works part time and has two children aged 5 and 17 who are both at school. The children are in good health and she mentioned that one receives certain medical treatment but said that this does not cause problems for them. She indicated that she received assistance with the rent in the form of housing benefit. The Respondent did not wish to oppose an order being made nor to suggest that it would not be reasonable to grant an order. Her concern was the timescale in which she might be required to move out of the property.

8.The Tribunal Legal member explained that the application was affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 so that if an order was granted it could not be enforced until after 31<sup>st</sup> March 2024, most likely some time in April 2024.The Applicant's representative agreed that this was the timescale they were looking at and confirmed that in the event of an order being made that they would

work with the Respondent as to any date for moving out of the property. The Respondent was not seeking that execution of any order made be delayed.

9.The Applicant's representative Miss McLellan confirmed that the Applicant has a property portfolio other than this property and she could not advise as to whether the financial issues raised by the Applicant as regards the shortfall between the rent and the mortgage in relation to this property were causing any financial pressure on the Applicant.

10.The Tribunal had sight of a Notice to Leave dated 11<sup>th</sup> May 2023 and emailed to the Respondent on the same date setting out the eviction ground and stating that an application to the Tribunal would not be made before 10<sup>th</sup> August 2023.

11.The Tribunal also had sight of a notice in terms of Section 11 of the Homelessness etc ( Scotland) Act 2003 which had been sent to the local authority by e mail on 23<sup>rd</sup> August 2023.

12.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

13.The parties entered into a tenancy at the property with effect from 2012.

14.On 11<sup>th</sup> March 2023 a private residential tenancy was created in relation to the property and signed by the parties who had agreed to create a new tenancy.

15.The monthly rent in terms of this tenancy is £650.

16.On 11<sup>th</sup> May 2023 a Notice to Leave in proper form was emailed to the Respondent setting out that the Applicant intended to sell the let property and giving notice that an application to the First Tier Tribunal for an eviction order would not be made before 10<sup>th</sup> August 2023.

17.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in relation to this application on 23<sup>rd</sup> August 2023.

18.A sales valuation has been carried out at the property in November 2023 and a surveyor has carried out an inspection of the property.

19.The Applicant intends to sell the let property as soon as he can as the monthly mortgage payment, he is making exceeds the monthly rent and the property is costing him around £3500 a year to run over and above the rent when he includes insurance, repairs and maintenance.

20.The Respondent lives at the property with two school age children who are in generally good health.

21.The Respondent works part time and is in receipt of housing benefit.

22.The Respondent has approached the local council and a number of housing associations in order to be re housed.

23.The Respondent does not oppose the granting of an eviction order.

### **Reasons for Decision**

24.The Tribunal was satisfied that the eviction ground was made out and that appropriate procedures had been carried out in relation to the eviction in advance of the application being made. The Applicant had clearly moved beyond thinking about selling the property and had formed the intention to sell it having had the property valued and surveyed.

25.On the question of reasonableness, the Tribunal considered the approach set out in *Barclay v Hannah* 1947 SC 245 which indicates that the Tribunal is under a duty to consider the whole circumstances before it. In this application the Respondent attended and did not oppose an order being granted or suggest that there issues as part of her position to be considered in terms of reasonableness. The Tribunal weighed all the factors before it. The Applicant is losing money steadily as the property continues to be rented out and he intends to sell as soon as possible to stop further financial losses being made. This factor appears to outweigh any other circumstances before the Tribunal since the Respondent appeared content to seek other housing and did not put forward any issues which might afford weight to the order being refused.

### **Decision**

The Tribunal determined that an eviction order be granted against the Respondent and in favour of the Applicant in terms of Ground 1 of Schedule 5 of the Private Housing ( Tenancies) Scotland Act 2016 in that the Applicant intends to sell the let property or at least put it up for sale within three months of the tenant ceasing to occupy it and it is reasonable on account of those facts to grant the order.

### **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.**

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**Legal Member/Chair**

**17.1.24**  
**Date**