



**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/23/2957**

**Re: Property at 17 Generals Gate, Uddingston, G71 7QP (“the Property”)**

**Parties:**

**Mrs Mary Inglis, 39 Greenfield Avenue, Alloway, South Ayrshire, KA7 4NR (“the Applicant”)**

**Miss Kimberley Kerr, 17 Generals Gate, Uddingston, G71 7QP (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs H Barclay (Ordinary Member)**

**Decision (in absence of the Respondent)**

**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 dated 25<sup>th</sup> August 2023, and received in the period between 28<sup>th</sup> August and 11<sup>th</sup> October 2023, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant representative lodged a copy of a private residential tenancy agreement that commenced on 28<sup>th</sup> February 2019, section 11 notice and evidence of service, Notice to Leave and evidence of service, and evidence of intention to sell. The Applicant is seeking an order for possession under ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The Applicant lodged a further copy Notice to Leave dated and served on 25<sup>th</sup> August 2023, citing grounds 1a and ground 12, together with information regarding the Applicant’s family circumstances and a rent statement. The Applicant requested permission to add the additional grounds.

3. Service of the application and notification of a Case Management Discussion was made upon the Respondent personally by Sheriff Officer on 13<sup>th</sup> December 2023.

### **The Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference on 7<sup>th</sup> February 2024. The Applicant was represented by Mrs Nicola Canale. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Mrs Canale said there had been no recent communication with, or correspondence from, the Respondent. The Applicant is seeking an eviction order.
7. The Applicant decided to sell the Property as her fixed rate mortgage came to an end and she could no longer afford the mortgage payments. Additionally, the family's financial situation has become difficult due to family illness and an inability of a family member to work due to a progressive illness, which can be affected by financial stress. The Applicant is not in employment. A dependent relative living with the Applicant has significant health needs and may require residential care, which will impact upon the Applicant's financial circumstances.
8. The Respondent has accrued rent arrears in the sum of £3928.33. The rent is £695 per month, and the Respondent receives housing payment of £495 per month, which is paid directly to the Applicant. The Respondent is not paying anything over and above this payment.
9. Responding to questions from the Tribunal, Mrs Canale said the Respondent lives alone. Her daughter previously lived with her but has now left home. The Respondent is in employment. Mrs Canale said she has worked closely with the Respondent, who had been a tenant for some years prior to this tenancy, when there was a joint assured tenancy in place. Mrs Canale said she has previously tried to assist the Respondent in securing alternative accommodation, as the Respondent had indicated that she wished to downsize. A one-bedroom property had been identified as a private let, but the Respondent indicated she wished to obtain social housing close to her mother, as she has mobility issues and would appreciate support of family. The Respondent has been proactive in the past in trying to secure social housing, and has indicated that private sector rented housing is too expensive for her. There have been minor issues with rent arrears during the tenancy, but the Respondent always worked with Mrs Canale to address the arrears in the past. She is not responding to requests for payment currently. A claim for discretionary housing payment was not granted because Notice to Leave had been served.

10. Mrs Canale said she had lodged further evidence by email on 28<sup>th</sup> January 2023. A search of the system by the Tribunal Clerk indicated that the email had not been received. Mrs Canale sent the email again during the CMD, however, the Tribunal indicated it would not be appropriate to accept the late lodging of the documents, as they had not been served upon the Respondent.

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

- 11.
- (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 29<sup>th</sup> February 2019.
  - (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 Applicant is in financial difficulty as a result of the illness and inability to work of a family member.
  - (vi) The Respondent has failed to make payment of rent lawfully due.
  - (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

12. 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.
13. 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.
14. The Tribunal did not consider it would be appropriate to grant permission to include grounds 1a and 12 as there was insufficient evidence before it to show that these grounds were met at the time the first Notice to Leave was served.
15. In considering whether it was reasonable to grant the eviction order, the Tribunal took into account the Applicant's situation, including the rise in mortgage payments and the ill-health of two family members. The inability to work in respect of one family member is having a direct impact upon the Applicant's financial circumstances, and the likelihood of residential care for another family member is likely to impact further upon the Applicant's financial

circumstances. The financial situation is likely to cause stress to the Applicant and her family, and this is compounded by the Respondent's failure to pay her rent in full.

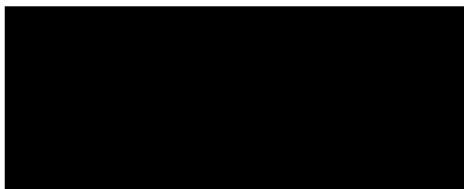
16. The Tribunal considered it unfortunate that the Respondent was not present despite having been notified of the CMD. The Tribunal took into account the information provided by Mrs Canale, which indicated that the Respondent has health issues which may be affected by the granting of an eviction order. The Tribunal took into account the information that the Respondent had been a long-standing tenant and had run into difficulties paying her rent in the past, but had always worked to clear the arrears. The situation appears to have changed more recently, with no communication from the Respondent, and arrears amounting to the equivalent of over five and a half months' rent.
17. In all the circumstances, and in the absence of any information from the Respondent, the Tribunal considered it was reasonable to grant an eviction order.

### **Decision**

18. 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**

**Date 7<sup>th</sup> February 2024**