



**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/23/2860**

**Re: Property at 14 Dykeside Road, Bathgate, West Lothian, EH48 4BD (“the Property”)**

**Parties:**

**Mr James O'Connor, 16 Meadow Crescent, Fauldhouse, West Lothian, EH47 9AX (“the Applicant”)**

**Miss Victoria Cairney, 14 Dykeside Road, Bathgate, West Lothian, EH48 4BD (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Sandra Brydon (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 be made in terms of paragraph 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016**

**1. Background**

- 1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an order for eviction of the Respondent from the property let on a private residential tenancy. This is on the ground that the Applicant intends to sell the property.
- 1.2 The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave given to the Respondent and an email from the Applicant’s estate agent confirming their instruction in relation to the sale of the property.
- 1.3 No written representations were received from the Respondent.

## 2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 9 January 2024 by teleconference. The Applicant appeared personally. The Respondent was neither present nor was she represented.
- 2.2 The Applicant confirmed that the application was insisted upon. The Tribunal noted that intimation of the application and Case Management Discussion had been given to the Respondent and considered it appropriate to proceed as permitted by rule 29 of the Chamber Rules.
- 2.3 The Applicant confirmed that he intended to sell the property, as, at 67 years of age, he wished to retire. He also suffered from health conditions including asthma, sleep apnoea and tinnitus which had influenced his decision. He owned five properties which he made available for rent. This was the first application he had made for an eviction order. The others were to be sold. He had encouraged the Respondent to attend to inform the Tribunal that she is looking for social housing. He understood that she resided with two children, one of whom was around 16 years of age and the other around 3 years of age. He believed that the Respondent had applied for social housing, including to the local authority and a Housing Association but that they would not provide assistance until an eviction order were granted. Further, the Respondent wished to move to social housing in another part of West Lothian and had requested the Applicant write to the housing providers to whom she had applied confirming his intention to sell the property.
- 2.4 The Tribunal confirmed that the order sought would be granted.

## 3. Reasons For Decision

- 3.1 The Applicant had served the requisite notice to leave upon the Respondent. He had provided evidence and information regarding his intention to sell the property. Accordingly, the issue the Tribunal required to consider was whether it was reasonable to grant an order for recovery of possession.
- 3.2 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant had articulated a reason behind the decision to sell. The Respondent appeared to wish to move from the property albeit had not been able to yet obtain alternative accommodation. She had not stated any opposition to the application. It was within the Tribunal's knowledge that the local authority would owe duties to the Respondent should she be threatened with becoming homeless ~~in the next two months~~. The Tribunal noted that the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") applied to the present application. Any order could therefore not be enforced prior to 31 March 2024. This ought

to may provide sufficient time for the Respondent to engage with the local authority and source alternative accommodation for her and her family.

### **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**

**9<sup>th</sup> January 2024**

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**Date**