



**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/23/4093**

**Re: Property at 2 Mckinlay Terrace, Loanhead, Midlothian, EH20 9JG (“the Property”)**

**Parties:**

**Mr Munwar Hussain, 3 St Michaels Yard, Dundee, DD4 9AP (“the Applicant”)**

**Ms Gemma McHale, 2 Mckinlay Terrace, Loanhead, Midlothian, EH20 9JG (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to the Order sought for recovery of possession of the property.**

**Background**

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a Case Management Discussion (“CMD”).
3. Letters were issued on 13 March 2024 informing both parties that a CMD had been assigned for 19 April 2024 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion, and were informed that the Tribunal could make a decision today on the application if the Tribunal had sufficient information and considered the procedure to have been fair. The Respondent was invited to make written representations by 3 April 2024. No

written representations were received by the Tribunal. The letter was served on the Respondent personally by Sheriff Officers on 14 March 2024

### **The Case Management Discussion**

4. The CMD took place by conference call. The Applicant was represented by Ms Alexandra Wooley. The Respondent did not join the conference call. The Tribunal explained the purpose of the CMD.

#### *Preliminary Matter*

5. In terms of Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the 2016 Act'), the Applicant served a Notice to Leave ('NTL') providing notice of his intention to raise an application for possession of the Property. The NTL was not in force at the time of lodging the application. The application was dated 16 November 2023. The NTL was dated 19 October 2023, and the period of Notice expired on 14 January 2024. The Applicant sought authority from the Tribunal to lodge an application before the NTL had expired under Section 52 (4) of the 2016 Act. The Tribunal had sought representations in relation to this premature application.

6. Written submissions were required prior to the Application being accepted. These submissions were included in the paperwork served on the Respondent.

7. The Applicant set out in the submissions that the Respondent had been served with a NTL on 2 June 2023 ("the First NTL"). The First NTL expired on 27 August 2023, which was latterly noted to be one day short of the appropriate notice period. A new Notice to Leave was served on 19 October 2023 ("the Second NTL") and was due to expire on 14 January 2024. In spite of the error with the First NTL, the Respondent had been aware of the Applicant's desire to recover the Property to sell it since 2 June 2023, being a period of more than six months. It was contended that this was far above the statutory notice period required under the 2016 Act.

8. It was also submitted that had the First NTL's expiry not been a day too short, it would have been valid to found the present eviction application upon.

9. At the date of the CMD, the Second NTL had now expired. The Respondent had thus had the full statutory notice period to consider her position and explore alternative accommodation.

10. The Form E contained an application by the Applicant in terms of section 52(4) of the 2016 Act to seek the Tribunal's permission to proceed early on the basis "it is reasonable to do so".

11. The tribunal determined that it was reasonable to grant permission to proceed with the application early in the circumstances.

12. Ms Wooley invited the Tribunal to grant the order as sought. She advised the Tribunal that she had not received any communication from the Respondent. Neither had the Letting Agent. As far as she was aware, the Respondent was still resident in

the Property. She sought the Order for recovery of possession to allow the Applicant to sell the Property.

### **Findings in Fact**

13. The parties entered into a private residential tenancy which commenced 9 December 2017.

14. The Applicant served a first Notice to Leave on the Respondent by recorded delivery mail on 2 June 2023.

15. The Applicant served a second Notice to Leave on the Respondent by recorded delivery mail on 19 October 2023.

16. The Applicant has instructed Your Move to sell the Property when he recovers possession.

17. The Applicant has served Notice under section 11 of the Homelessness etc (Scotland) Act 2003 on Midlothian Council on 16 November 2023.

18. The Applicant intends to sell the Property at the earliest opportunity.

### **Reasons for Decision**

19. Section 52 of the 2016 Act states;-

52 Applications for eviction orders and consideration of them

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

20. Section 52(4) of the 2016 Act states as follows: "(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so."

21. It is reasonable to consider the Application early for the following reasons: A previous Notice to Leave was served on 2 June 2023 and has now expired. A new Notice has been served. It is reasonable to have the application heard early because the Tenant has already been served with a notice and has been aware of the Applicant's intentions to recover the property since June 2023.

22. The Applicant has provided verification that he has instructed 'your Move' to sell the Property.

23. In terms of the Notice to Leave the Applicant has raised these proceedings for recovery of the Property under and in terms of Section 50 of the 2016 Act and Ground 1 of Schedule 3 of the said Act. The Applicant seeks an Eviction Order relative to the Property in that the Applicant intends to sell the Property. In terms of Ground 1, Part 1 of Schedule 3 of the 2016 Act, the First-tier Tribunal may find that the ground applies if the landlord- (a) Is entitled to sell the let property, and (b) Intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. The Applicant intends to sell the Property. Copy document tending to show the Applicant's intention is produced. The Applicant seeks an Eviction Order relative to the Property. In all these circumstances the Eviction Order sought is reasonable and accordingly should be granted.

## **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**

**19 April 2024**

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**Date**