

**The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/24/0671**

**Re: Property at 40, Sawmill Medway, Bonnyrigg, Midlothian, EH19 3FX (“the Property”)**

**Parties:**

**Mr and Mrs Lachlan and Kelda Archibald, residing at 85, Stagg Park, Dalkeith, EH22 2FY, (“the Applicants”) per their agents, T C Young, solicitors, 7, West George Street, Glasgow G2 1BA (“the Applicant’s Agents”)**

**Ms. Danielle Gilbertson residing at 40, Sawmill Medway, Bonnyrigg, Midlothian, EH19 3FX (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Nick Allan (Surveyor and Ordinary Member)**

**Background**

1. By application received on 9 February 2024 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
  - i) copy private residential tenancy agreement between the Parties;
  - ii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act, with proof of issue;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Midlothian Council being the relevant local authority, with proof of issue and
  - iv) copy emails from Neilsons, Solicitors and Estate Agency, confirming instructions to sell the Property when vacant possession is obtained.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 7 June 2024 at 14.00 by telephone conference. The CMD was intimated to the Parties and, in particular, to the Respondent by Sheriff Officer service on 3 May 2024.

## **CMD**

4. The CMD took place on 7 June 2024 at 14.00. The Applicants were not present and were represented by Ms. Callaghan of the Applicant's Agents. Ms. Gilbertson, the Respondent, was present and unrepresented.
5. Ms. Callaghan for the Applicants confirmed that the Order is sought. She explained that the Applicants' reasons for selling are that the mortgage repayments for both the Property and the Applicants' principal home have increased significantly and the Applicants require to sell the Property to reduce their mortgage commitments. Ms. Callaghan stated that they do not own any other rental properties.
6. Ms. Gilbertson, the Respondent, stated that she did not formally oppose the Application but had been unable to secure alternative accommodation and so remained in the Property on the advice of the local authority. She stated that she lived alone and that she had been in contact with the local authority for advice and assistance on homelessness but they are not able to offer anything until the Order is granted. She advised the Tribunal that she is not employed and has a six year old son who has a neurological issues.

## **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a private residential tenancy of the Property between the Parties ;
  - ii) The Applicants have a mortgage secured on the Property and on their principal home;
  - iii) The mortgage repayments for both have increased significantly;
  - iv) The Applicant require to sell the Property to reduce their mortgage commitments;
  - v) The Applicants intend to sell the Property and have instructed selling agents;
  - vi) The correct statutory procedures have been carried out;
  - vii) The Respondent is a single person, is not employed and has a six year old son who has a neurological issues and
  - vii) The Respondent does not formally oppose the Application but has no alternative accommodation in which to reside and so continues to reside in the Property.

## **Issue for the Tribunal**

8. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *"It is an eviction ground that the landlord intends to sell the let property. (2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (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 and (c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."*
9. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it

had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
12. The Tribunal had regard to the facts that the Applicants' mortgage repayments have risen and the Applicants require to sell the Property to reduce their mortgage commitments. The Tribunal had regard to the Respondent's circumstances and took the view that the homelessness legislation provides a safety net for her and son. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
13. This decision is unanimous.

### **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.**

# Karen Moore

7 June 2024

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Legal Member/Chair

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Date