



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/4458**

**Re: Property at 32 St Catherine's Crescent, Shotts, ML7 4JG (“the Property”)**

**Parties:**

**David Moncur, Diane Moncur, Harmony, 25 The Highlands, Bexhill-on-Sea, TN39 5HL (“the Applicant”)**

**Paul Alexander, Miss Sienna Marie Young, 32 St Catherine's Crescent, Shotts, ML7 4JG (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 12 December 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, including a letter from Property Store Estate Agents

Agents confirming their instructions to market/sell the Property for the Applicant, once vacant possession has been obtained. An application for a payment order in respect of rent arrears amounting to £3,074.50 was also lodged and conjoined with this application (reference FTS/HPC/CV/23/4455).

2. Following initial procedure, on 15 January 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 19 April 2024 was served on both Respondents by way of Sheriff Officer on 13 March 2024. In terms of said notification, the Respondent was given until 1 April 2024 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.
4. On 18 April 2024, the Applicant’s representative emailed written submissions and some other documentation, including an updated rent statement and check-out report to the Tribunal to advise of a change in circumstances, in that it had just been ascertained by the Applicant’s letting agents that the Property had been vacated and apparently abandoned.

### **Case Management Discussion**

5. A Case Management Discussion (“CMD”) took place by telephone conference call on 19 April 2024 at 10am, attended only by Ms Tracey Campbell-Hynd, Solicitor of TCH Law, the Applicant’s representative. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application. Ms Campbell-Hynd confirmed that an eviction order was still sought in the circumstances, to be on the safe side, although it appeared the Property had been abandoned. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
7. Reference was made to the application and supporting documentation lodged. Ms Campbell-Hynd confirmed that the Applicant intended to sell the Property. The background to the rent arrears which had arisen was that the rent had been paid in full until May 2023, thereafter partial payments of rent of £275 per month were made in June, July and August 2023, and then payments towards rent stopped altogether. There was no communication or explanation from the Respondents regarding this, although the letting agents have now established that the second-named Respondent had moved out of the Property around

summer last year, due to relationship breakdown, and this coincided with the rental payments reducing. It is understood that the first-named Respondent continued to reside in the Property but had recently moved out without notice being given. The Applicant's letting agents only found out about this when they received the keys to the Property in the post and thereafter visited the Property to inspect and make sure it was secure. The Property has been left damaged and mostly empty, although a mattress and some rubbish had been left behind. Ms Campbell-Hynd confirmed that she had just received some photographs through from the letting agents whilst she was on the telephone-conference call. Contact could not be made with the first-named Respondent who appears to have changed his telephone number and his whereabouts are unknown. Ms Campbell-Hynd had managed to contact the second-named Respondent by telephone and she stated that she had moved to the Inverness area but declined to provide her forwarding address. It is understood that the parties two children (one now an adult and the other around 14) reside with the second-named Respondent in Inverness. Ms Campbell-Hynd confirmed that she has no information as to whether the Respondent had sought local authority housing, nor as to the other personal/financial circumstances of the Respondent. There is nothing to indicate that the partial payments of rent received in 2023 were from state benefits. She thinks it more likely that the first-named Respondent was simply paying half of the rental payments due, following the second-named Respondent moving out. No steps were taken to try and have the second-named Respondent removed from the lease which remains in joint names. It was noted that the Applicant's wish to sell arose from their decision that it was no longer financially viable for them to let this Property out, in view of increased mortgage costs, etc.

8. The Tribunal Members discussed the application and thereafter advised that the eviction order will be granted and the process which will now follow. Ms Campbell-Hynd was thanked for her attendance.

### **Findings in Fact**

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 3 July 2020.
3. The second-named Respondent is understood to have moved out of the Property, with the parties' children, during the summer of 2023, although this was not notified to the Applicant's letting agents at the time.
4. The first-named Respondent is understood to have continued residing in the Property until very recently.
5. The first-named Respondent is understood to have vacated the Property very recently, without giving notice.

6. The Applicant's letting agents received the keys to the Property back through the post.
7. The Applicant's letting agents thereafter attended at the Property, found it to be abandoned, took entry and carried out a check-out inspection.
8. The check-out report dated 16 April 2024 discloses that the Property has been left damaged and in poor condition by the Respondent and that most of the furniture and contents have been removed, with the exception of a few items and some rubbish.
9. The Respondent was in rent arrears amounting to £3,074.50 when this application was lodged and the rent arrears have since increased.
10. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession.
11. A Notice to Leave in proper form and giving the requisite period of notice was emailed to each Respondent on 25 August 2024.
12. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 19 November 2023.
13. The Tribunal Application was submitted on 12 December 2023.
14. The Respondent did not lodge any written representations and nor did either of them attend the CMD.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant's representative, Ms Campbell-Hynd.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent and that the Applicant's intention to sell

