



**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/23/4590**

**Re: Property at 4 Lennie Cottages, Craigs Road, Edinburgh, EH12 0BB (“the Property”)**

**Parties:**

**Cornelia Aigner (formerly Haindl), Wald 5, Rattenkirchen 84431, Germany, Germany (“the Applicant”)**

**Linda Watt, 4 Lennie Cottages, Craigs Road, Edinburgh, EH12 0BB (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

**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 19 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 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 covering letter sent with the Notice to Leave from the Applicant's solicitor. A tenancy agreement was not produced but an explanation was provided for this.

2. Following initial procedure, on 18 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 the Respondent by way of Sheriff Officer on 12 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.

### **Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference call on 19 April 2024 at 2pm, attended by Mr David Gray, Solicitor of Gilson Gray LLP, the Applicant's representative and by the Respondent, Ms Linda Watt.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application. Ms Watt was asked to confirm her position in relation to same. She stated that she had already been in contact with Mr Gray to confirm that she had managed to secure alternative accommodation for herself and her adult daughter to move into and that this was due to be from 6 May 2024. On that basis she was not opposing the application, although she did state that she does not think the ground stated for the eviction ie. that the landlord intends to sell, is genuine. She thinks that the real reason is that there was a disagreement between herself and the Applicant last year, arising from the fact that the Applicant wanted to move into the Property as a resident landlord and Ms Watt had refused. She has also found the process stressful and does not like the fact that she is going to be subject to an eviction order. Ms Watt reiterated, however, that she not wishing to oppose on the basis that the Applicant wishes to evict her and it now suits her to move into the alternative property she has secured.
6. 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 sought. Mr Gray was asked to address the Tribunal in relation to these matters. He referred to the supporting documentation lodged with the application and confirmed that the Applicant still wished to obtain an eviction order, albeit that the Respondent intends to vacate. He explained that the security of an order was required, in case the Respondent's alternative property falls through. If he were to agree to an adjournment of the application, he is aware that it is likely that there would not be a further CMD fixed until at least August.

7. Mr Gray stated that the Applicant is now permanently resident in Germany and wishes to purchase a property there. This is the only property she owns in Scotland and does not wish to let the Property from abroad or have to return to Scotland part-time in order to manage it. He explained that the Applicant had not realised what she was doing when she entered into the agreement with the Respondent. She intended to retain one of the bedrooms in the Property for her own personal use and let the other two bedrooms to the Respondent. As she never ended up moving into the Property herself due to unforeseen circumstances, she ended up 'accidentally' entering into a Private Residential Tenancy arrangement with the Respondent and the arrangement between the parties has been treated as such since then. Mr Gray confirmed that the Applicant has employment of her own and has no wish to be a landlord. The Notice to Leave and other procedures were correctly carried out and Mr Gray confirmed that his firm had tried to be as sensitive as possible in their dealings with the Respondent, in the circumstances. Mr Gray confirmed that the covering letter his firm had sent with the Notice to Leave had explained the circumstances to the Respondent and that his firm would be dealing with the sale of the Property. He confirmed that he is aware that some electrical works required to be done but that the Property would be being marketed for sale as soon as possible after vacant possession was obtained, and that this would be within the three-month period specified in the legislation. Mr Gray submitted that the ground was met and that it was reasonable, in the circumstances, for the eviction order sought to be granted. As to the Respondent's comments about the ground for eviction being relied on not being genuine, Mr Gray confirmed that he was provided with clear instructions by the Applicant and he is not aware of anything that suggests otherwise. He also pointed to the remedies available in the legislation to a tenant who is misled in such a way.
8. Ms Watt indicated that she was not in complete agreement with the background facts stated by Mr Gray but is aware that the Applicant did not do things properly as regards the tenancy. She wants to move on but is aware of the remedies mentioned by Mr Gray and will be keeping an eye on the situation to check that the Property is indeed sold once she and her daughter move out. There was some further discussion regarding Ms Watt's concerns about eviction and also the timescale for this, given that she hopes to move out by 6 May. Mr Gray then indicated that he would be happy to agree an extension on the order being enforceable until 1 June 2024 if that reassured the Respondent, in case there was a slight delay with her alternative accommodation being ready, etc. It was also explained to Ms Watt that it would be clear from the terms of an order granted that the eviction had been granted under ground 1 which was a 'no fault eviction' as far as the tenant's conduct is concerned. Ms Watt confirmed that she was happier with that timescale and thanked Mr Gray for the offer to extend. She confirmed that she would keep Mr Gray informed but still intended to move out when planned.
9. The Tribunal Members discussed the application and thereafter advised that the eviction order would be granted, with the extended date of 1 June 2024 as the earliest date for enforcement of the order, and the process which will now follow. Mr Gray and Ms Watt were thanked for their attendance.

## **Findings in Fact**

1. The Applicant is the 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 or around 11 September 2021 and in respect of which the monthly rental was £1,200 per calendar month.
3. No written tenancy agreement was entered into between the parties.
4. The Respondent remains in occupation of the Property.
5. 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.
6. A Notice to Leave in proper form and giving the requisite period of notice was served personally on the Respondent by Sheriff Officer on 25 August 2023.
7. 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 December 2023.
8. The Tribunal Application was submitted on 19 December 2023.
9. The Respondent did not lodge any written representations prior to the CMD but did attend the CMD.
10. The application was not opposed by the Respondent.
11. The Respondent has secured alternative accommodation and hopes to vacate the Property by 6 May 2024.

## **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, Mr Gray and by the Respondent, Ms Watt.
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, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from the Applicant's solicitor's firm confirming the Applicant's intention to sell and the reasons for this. Mr Gray also made oral representations at the CMD providing further background information. The Respondent also provided oral information at the CMD regarding her own circumstances. In all the circumstances, and particularly on the basis that the Respondent was not opposing the application and had secured alternative accommodation which she intended to move into soon, the Tribunal considered it reasonable to grant the eviction order sought. The Tribunal considered the offer on behalf of the Applicant to agree to an extended date of 1 June 2024 before the eviction order could be enforced to be a reasonable one, which provided the Respondent with a degree of reassurance regarding the timescales involved and noted that the Respondent too was happy with this.

4. Accordingly, the Tribunal determined that an order for recovery of possession of the Property under ground 1 could properly be granted at the CMD, subject to the extended date noted above.

### **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.**



  N.Weir    
\_\_\_\_\_ Legal Member/Chair

**19 April 2024**  
**Date**