



**in terms of Rule 17 of 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/24/1096**

**Re: Property at Flat 18, 4 Arneil Place, Edinburgh, EH5 2GT (“the Property”)**

**Parties:**

**Carmen Wai Fun Chan, 5 Flat 10 Arneil Place, Edinburgh, EH5 2GR (“the Applicant”) per her agents, Gilson Gray LLP, 29, Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Agents”)**

**Mr James Barr, Flat 18, 4 Arneil Place, Edinburgh, EH5 2GT (“the Respondent”) per his representative, Mrs. Susan Hay, 15, Humbie Rd., Kirkliston**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

1. By application received between 5 March 2024 and 10 April 2024 (“the Application”), the Applicant’s Agents on behalf of the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground 1 of Schedule 3 to the Act that the landlord intends to sell the Property. The Application comprised copy tenancy agreement between Siu Ming Chan, the heritable proprietor of the Property and the Respondent, copy registered Power of Attorney in favour of the Applicant, copy Notice to Leave and proof of issue to the Respondent by way of email, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council, being the relevant local authority.
2. The Application set out full detail of the Applicant’s intention to sell the Property and explained that Mrs. Chan, the owner of Property, who is elderly and resides

in Hong Kong, has significant health issues and requires additional care. She has substantial ongoing healthcare costs and needs to sell the Property to meet these costs.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 23 August 2024 at 14.00 by telephone conference and intimated to the Parties.
4. Prior to the CMD, the Applicant's Agents submitted a further written statement expanding on Mrs. Chan's circumstances. The statement explained that as far as the Applicant is aware, the Respondent, Mr. Barr, is a single man in employment and that he has been looking for alternative accommodation. The statement explained that Mrs. Chan owns her home in Hong Kong and the Property and so she is not a commercial or professional landlord. She is 73 years old and retired and the rent from the Property is her principal source of income, amounting to £6,274 per annum before tax. The statement stressed the need to raise funds to cover the medical and living expenses of Mrs. Chan in Hong Kong.

#### **CMD**

5. The CMD took place on 23 August 2024 at 14.00 by telephone. The Applicant, did not take part and was represented by Mr. D. Alexander of the Applicant's Agents. The Respondent, Mr. Barr, was present on the call and represented by his mother, Mrs. Susan Hay, who explained that Mr. Barr's medical condition means that he is unable to speak for himself.
6. Mr. Alexander confirmed that the Order sought and explained that there may have been a compromise with Mr. Barr for Mr. Barr to vacate the Property by 23 September 2024.
7. Mrs. Hay agreed that it had been thought that her son could be assisted to vacate the Property but that this now seemed unlikely. She explained that it had been extremely difficult to secure alternative accommodation and that the local authority had advised against voluntarily leaving the Property without an Order. Mrs. Hay explained that her son has particular housing needs and she was more hopeful that these could be met with support from the Council. She explained that he also needs significant family support which again restricts his options.
8. Mr. Alexander submitted that Mrs. Chan's situation was also grave and that her need to sell the Property was great. The Tribunal canvassed the option of delaying an Order, if granted, for an extended period to allow Mrs. Hay to

assist her son to secure suitable accommodation. Mr. Alexander advised that there would not be an objection to this.

### **Findings in Fact**

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a tenancy of the Property between the Mrs. Chan and Mr. Barr;
  - ii) The Applicant has Power of Attorney for Mrs. Chan and is entitled to sell the Property on her behalf;
  - iii) Mrs. Chan is elderly and resides in Hong Kong;
  - iv) Mrs. Chan is in very poor health;
  - v) Mrs. Chan requires to pay for her health care and requires the sale of the Property to fund this;
  - vi) The Applicant intends to sell the Property to provide essential funds for Mrs. Chan;
  - vii) Mr. Barr has a medical condition and is now in receipt of benefits;
  - viii) Mr. Barr and his mother on his behalf have been trying to secure alternative accommodation but have been unable to do so;
  - ix) Mr. Barr has applied to Edinburgh City Council for assistance;
  - x) Edinburgh City Council advise that, if Mr. Barr is made homeless, they will be to assist him further;
  - xi) Mr. Barr cannot vacate the Property without having suitable alternative accommodation;
  - xii) Mrs. Chan's decision to sell the Property is not due to Mr. Barr's conduct as a tenant;
  - xiii) The Application is not due to any fault or misconduct by Mr. Barr.

### **Issue for the Tribunal**

10. The statutory ground and procedure being established, and the Application not being opposed formally in respect of its merits, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". 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**

11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C.

245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

13. The Tribunal then looked to balance the rights and interests of both parties.
14. The Tribunal had regard to the fact that the Applicant requires to sell the Property on behalf of Mrs. Chan due to Mrs. Chan's age, her ill-health and her financial expenses for medical care. The Tribunal noted that Mrs. Chan resides in Hong Kong and that her age and ill-health will impact on her ability to carry out the function of a landlord
15. The Tribunal had regard to Mr. Barr's position and noted his additional requirements occasioned by his medical issues. The Tribunal noted that Mr. Barr has been unable to secure alternative accommodation and has taken steps to do so. The Tribunal had regard to the fact that the Respondent has been in contact with the local authority for assistance and that, if an Order is granted, Mr. Barr will be entitled to further assistance from the local authority in terms of Part II of the Housing (Scotland) Act 1987 and is likely to be eligible to access accommodation suitable for his particular needs.
16. On balance, the Tribunal took the view that not granting the Order would have a greater detrimental impact on Mrs. Chan in respect of her age, health and financial position than it would on Mr. Barr who has a route to obtain alternative housing.
17. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. The Tribunal determined to stay the Order until 23 November 2024 to allow Mr. Barr sufficient time to secure suitable permanent accommodation from the local authority and to minimise the likelihood of being accommodated in temporary housing.

### **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

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Legal Member/Chair

23 August 2024

Date