



**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, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/1513**

**Re: Property at 18 Union Road, Broxburn, EH52 6HR (“the Property”)**

**Parties:**

**Ms Lorraine Smith, 47 Glenshee Gardens, Carluke, ML8 4RR (“the Applicant”)**

**Mr Bogdan Stanescu, 18 Union Road, Broxburn, EH52 6HR (“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 3 April 2024, 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 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, namely a communication from an Estate Agent, confirming that they were instructed by the Applicant in relation to the sale.

2. Following initial procedure, on 3 June 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 8 October 2024 was served on the Respondent by way of Sheriff Officer on 29 August 2024. In terms of said notification, the Respondent was invited to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.
4. Prior to commencement of the CMD on 8 October 2024, the Tribunal Administration emailed the Applicant's representative, requesting that she lodge a copy of the tenancy agreement between the parties as it had been noted by the Tribunal Members that this had not been lodged previously. The Applicant's representative responded and lodged a copy of the tenancy agreement with the Tribunal by email prior to the CMD.

### **Case Management Discussion**

5. A Case Management Discussion ("CMD") took place by telephone conference call on 8 October 2024 at 2pm, attended only by the Applicant's representative, Ms Charlotte Gray, of Professional Property Letting Company. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but he did not do so.
6. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained and there was discussion regarding the eviction application. Ms Gray was asked if she had had any recent contact with the Respondent regarding the application or the CMD today. Ms Gray confirmed that she was contacted by the Respondent last week, requesting a landlord reference which was provided. The Respondent indicated that he would be vacating the Property by the end of last week. However, he did not do so. They had further contact yesterday, when he stated he would be vacating by the end of the day. However, she did not hear anything further so decided to attend at the Property herself this morning, at 7.30am. Ms Gray confirmed that, although the Respondent had removed all his personal belongings from the Property, he had still not completely moved out. He indicated that he was not going to be attending the CMD but was going to wait until an order was granted before he would finally vacate. Ms Gray confirmed that the Respondent lives alone at the Property, works as a mechanic and has no medical/health issues of which she is aware. She confirmed that, as the Respondent has not yet fully vacated and handed back the keys, the Applicant was still seeking an eviction order today.
7. As to the Applicant's circumstances, Ms Gray confirmed that she has recently separated and is looking to sell this Property to recover the equity in it. The Applicant has instructed estate agents and they have lodged confirmation of this with the Tribunal. Ms Gray confirmed that the Respondent has paid his

rent and that there have not been any issues with the tenancy as such. The decision to sell is just down to the Applicant's circumstances as owner of the Property.

8. Ms Gray was asked about the service of the Notice to Leave and she confirmed that they were relying on the notice served by email on 4 January 2024, proof of which has been lodged. As good practice, they also served the notice by way of Recorded Delivery post but this was not delivered until a later date. Reference was made to the terms of the tenancy agreement which authorises communication by way of email to the Respondent.
9. The Tribunal considered the application and confirmed that the Tribunal would grant the eviction order sought and the process which would follow. Ms Gray was thanked for her 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 10 February 2020.
3. 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.
4. A Notice to Leave in proper form and giving the requisite period of notice was sent by email to the Respondent on 4 January 2024 and acknowledged by him.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 31 March 2024.
6. The Tribunal Application was submitted on 3 April 2024, following the end of the notice period.
7. The Respondent remains in possession.
8. The Respondent did not lodge any written representations and nor did he 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.

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 is due to her wish to recover the sale proceeds of the Property, due to her own personal circumstances. The Tribunal was satisfied from the information provided by the Applicant's representative that the Applicant has a genuine intention to sell as soon as possible, for the reasons stated. The Applicant's representative had briefly addressed the Tribunal as to the circumstances of the Respondent and it was noted that he lived alone, was working and had been meeting his rent. It was also noted that the Applicant's representative had provided a landlord reference for the Respondent last week and that he has secured another property and has already removed most of his belongings from the Property, although has not yet fully vacated it. The Respondent was aware of the Tribunal proceedings and had not made any written representations nor attended the CMD. In all of the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.
4. The Tribunal did not have any material before it to contradict the Applicant's position, nor indicate that the Respondent was opposing the eviction. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

## **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.**

**Legal Member/Chair**

**8 October 2024**  
**Date**