

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/1232**

**Re: Property at 33C Douglas Road, Dundee, DD4 7SN (“the Property”)**

**Parties:**

**Mr Barry Gray, 76E Kemnay Gardens, Dundee, DD4 7TU (“the Applicant”)**

**Mr Sean Meldrum, 33C Douglas Road, Dundee, DD4 7SN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for possession relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.**

**Background**

1. By application dated 12 March 2024 the applicant seeks an order for possession relying on ground 1 (landlord intends to sell). This application was conjoined with application reference FTS/HPC/CV/24/1359 in terms of which the applicant seeks an order for payment in respect of rent arrears.
2. The following documents were lodged with the application:
  - Copy tenancy agreement
  - Section 11 notice
  - Notice to leave and proof of service
  - Letter from Martin & Co Estate Agents regarding sale of the property

- Correspondence regarding repossession proceedings by the mortgage lender
- Rent accounts for the duration of the tenancy.

### **Case management discussion (“cmd”) – teleconference – 20 September 2024**

3. The applicant was present with his representative, Mr Davidson from Martin & Co letting agents. The respondent was not present or represented. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29.
4. The applicant sought an order for eviction. Mr Davidson explained that the respondent had not paid any rent since February 2023. Rent arrears at present were £11,300. Mr Gray confirmed that this was his sole let property. He explained that he had been friends with the respondent when he entered into the lease agreement which commenced on 1 June 2021. The property is a two bedroomed flat. The rent due in terms of the lease agreement was £450 per month. Mr Gray confirmed that there was an outstanding mortgage over the property. Mr Gray had been relying on the rental income to cover the cost of the monthly mortgage payments. As the arrears built up the applicant fell into arrears with his mortgage. Mr Davidson confirmed that a repossession order had been obtained by the mortgage lender on 6 July 2023. Mr Davidson advised that he would be assisting the applicant to sell the property so that the proceeds could be paid towards the outstanding debt to the lenders. Mr Davidson advised that a better price would more likely be achieved if the applicant sold the property rather than the lender. Mr Davidson stated that there had been no contact from the respondent for approximately 9 months.
5. Mr Gray stated that he is employed as a gas engineer. He stated that the property is worth approximately £70000. He confirmed his intention to sell the property. He advised that as far as he was aware the respondent resided alone in the property.

### **Findings in fact and law**

6. Parties entered into a private rented tenancy agreement with a commencement date of 1 June 2021.
7. The applicant is the owner of the property.
8. The applicant intends to sell the property.
9. Rent arrears as at 20 September 2024 amounted to £11,300
10. As a result of rent arrears the applicant fell into arrears in his mortgage repayments.
11. A repossession order was obtained by the mortgage lender in respect of the property on 6 July 2024.
12. The applicant intends to use the proceeds from the sale of the property to repay the debt due to the mortgage lender.
13. A notice to leave in terms of section 50 of the Private Housing (Tenancies)(Scotland) Act 2016 dated 17 August 2023 was competently served on the respondent.
14. It is reasonable to grant an order for eviction

### **Reasons for the decision**

15. The Tribunal took into account the applicant's written representations and documents lodged on his behalf together with oral representations at the cmd. The respondent lodged no opposition to the application.
16. Ground 1 states:
  - (1) *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.*
  - (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

17. The Tribunal found the applicant and his representative to be straightforward and truthful in their representations at the hearing and accepted the evidence they provided in its entirety.

18. The Tribunal accepted that the applicant intended to sell the property as soon as possible.

19. In relation to whether it was reasonable to grant the order the Tribunal gave weight to the personal circumstances of the applicant and the reasons given for his decision to sell the property. The Tribunal took into account that the respondent had built up a large amount of arrears which had an ongoing financial impact on the applicant and was a source of stress. The Tribunal gave weight to the fact that the applicant had fallen into mortgage arrears due to the respondent's failure to pay rent. The Tribunal accepted that the applicant's mortgage lender had obtained a decree for repossession and in the event that the applicant did not sell the property it was likely that the lender would seek to do so. The Tribunal gave weight to the fact that the respondent had paid nothing since February 2023 without any explanation to the letting agent.

20. The Tribunal gave significant weight to the fact that the respondent had taken no steps to oppose the application. Taking the above factors into account the Tribunal was persuaded that on balance it was reasonable to grant an order for eviction in favour of the applicant.

## **Decision**

**The Tribunal determined to grant an order for eviction.**

## **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.**

Mary-Claire Kelly

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**Legal Member/Chair**

**20 September 2024**

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**Date**