



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 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 (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Ref: FTS/HPC/EV/24/0680**

**Re: 51B Seamore Street, Largs, KA30 9AW (“the Property”)**

**Parties:**

**Mr Graeme McQuarrie, 21 Flagstone Street, Werribee, Vic, 3030, Australia (“the Applicant”)**

**First Property Letting, 81 Alexander Avenue, Largs, KA30 9EX (“the Applicant’s Representative”)**

**Miss Danielle Kennedy, 51B Seamore Street, Largs, KA30 9AW (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner K.C. (Legal Member)**

**Mr. Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):**

**(1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicant intends to sell the let Property for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act.**

**(2) The decision of the tribunal was unanimous.**

## **Statement of Reasons**

### **Procedural Background**

1. The Applicant's Representative made an application to the tribunal on 5 February 2024 in terms of 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 (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant's Representative provided the required documents in support of the Application.
3. The tribunal's administration obtained a copy of the Title deeds for the Property which shows that the Applicant is the registered proprietor.
4. The application was accepted for determination and the tribunal sent letters of notification to all parties dated 11 September 2024 with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application on 15 October 2024 by teleconference at 1400h. The Application paperwork was personally served on the Respondent by Sheriff Officers on 13 September 2024 at the top right flat at 51 Seamore Street, Largs, KA30 9AW. The Respondent was told that if she wished to submit written representations these should be sent to the tribunal by 2 October 2024.
5. The Respondent did not submit any defence or any written representations to the tribunal and she did not make any contact with the tribunal after service of the Application paperwork and notification of the CMD.

### **CMD: 15 October 2024, 1400h, Teleconference**

6. Mrs MacDougall from the Applicant's Representative attended.
7. The Respondent did not attend. She did not contact the tribunal to say that there was any difficulty with attending. The tribunal considered the Certificate of Service and information about service from Sheriff Officers which confirmed that the Application and notification was served by them on 13 September 2024 at the top right flatted property at 51 Seamore Street. The tribunal considered the title deeds for the Property (Title Sheet AYR44057) which describe the subjects as 51B Seamore Street, Largs, KA30 9AW, being the eastmost upper floor house including the loft area of the block at 49, 51A, 51B and 53 Seamore Street, Largs, KA30 9AW. The tribunal was satisfied that the requirements of rule 24(1) of the 2017

Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of any party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

### **Submissions on behalf of the Applicant**

8. Mrs MacDougall asked the tribunal to make the order for eviction.
9. She said that the Notice to Leave dated 27 September 2023 was signed and sent by recorded delivery and signed for by 'Kennedy' on 28 September 2023, so the tribunal should accept that it had been sent and received by the Respondent. It specified that the ground relied on was ground 1, the landlord's intention to sell the property or at least market it for sale, for market value within three months of the Respondent ceasing to occupy the Property.
10. In relation to the method of communication with the Respondent, she said that the original tenancy was the tenant and her boyfriend. The respondent requested that the tenancy was sent out by paper to the house which she had to use for housing benefits. She confirmed receipt of the tenancy agreement by mail. Following that the only form of communication the agent had with the Respondent was by messenger. Email communication from the Respondent was very erratic. Sometimes they sent email and she did not get it and sometimes she did. They did not know if she had changed her email. Due to these issues, the agent thought that the most secure way to send the notice to leave was by recorded delivery post.
11. Mrs MacDougall said that she thinks that the flat is unoccupied and that the Respondent has left the property already. They cannot get into the Property unless an eviction order is made. Previously the Respondent was refusing any entry. She is not paying rent now either. The last rent payment was made was 12 August 2024. The account was not up to date at that time. There are £1412.00 rent arrears at present.
12. So far as Mrs MacDougall is aware, the tenant is in receipt of benefits for housing but she does not know whether it is housing benefit or the housing component of universal credit.
13. Mrs MacDougall said that as a sole tenant, the Respondent has been in the property for over four years. It is a two bedroomed property. The Respondent is single mum with a school aged daughter, although Mrs MacDougall believes that the Respondent's daughter is living with her gran because the Respondent has moved in with her boyfriend. Mrs MacDougall thinks that the Respondent is in part time employment.

14. Mrs MacDougall outlined the Applicant's circumstances and his intention to sell. He has lived in Australia for a few years. He went out on a work visa. At that time he did not know whether he was going to return to the UK. In the past six weeks he has been given residency in Australia. He will not be back in the UK. He needs to sell the property to purchase something in Australia. It is his only property in the UK. A different company MacTaggart and Co is selling the property. They are waiting to carry out the home report after there is vacant possession.
15. Mrs MacDougall added that in one of the conversations she had with the Respondent last year the Respondent said that she wanted to be given notice because that bumped her up the points list with the council because she could not afford the rent. She was in arrears at that time. Mrs MacDougall gave notice of the application to the local council. She has spoken to the housing benefit department previously because they discussed her being in arrears and asked about getting the benefits mandated directly to the landlord. Mrs MacDougall has had conversations with the council as they have called to ask how far on this tribunal process has moved and to keep them up to date.

**16. The tribunal makes the following findings-in-fact:**

- 16.1. The Applicant is the registered proprietor of the Property.
- 16.2. The Applicant resides in Australia and has recently been granted residency.
- 16.3. The Applicant intends to reside permanently in Australia and will not return to live in the UK.
- 16.4. The Property is the Applicant's only property in the UK.
- 16.5. The landlord intends to sell the Property with vacant possession within three months of the Respondent ceasing to occupy it.
- 16.6. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which started on 18 February 2020.
- 16.7. On 28 September 2023, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondent.
- 16.8. The Applicant has given the Respondent at least 84 days' notice that he requires possession.

- 16.9. The Application to the tribunal was made on 5 February 2024.
- 16.10. The Respondent lives in the Property on her own or with a daughter.
- 16.11. The Respondent has not opposed the Application for eviction.
- 16.12. The Respondent has not participated in the proceedings and did not attend the CMD on 15 October 2024 despite receiving notification by Sheriff Officers to attend.
- 16.13. There are rent arrears of £1412.00 as at 15 October 2024.

## **17. Findings in fact and law**

- 17.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.
- 17.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

## **Discussion**

18. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.
19. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

## **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.**

# S Tanner

15 October 2024

**Ms. Susanne L. M. Tanner K.C.**  
**Legal Member/Chair**