



**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**

**Chamber Ref: FTS/HPC/EV/24/1601**

**Re: Property at 35 Laurelbank, Dalkeith, EH22 2JH (“the Property”)**

**Parties:**

**Mrs Patrice Short, 12 Brixwold Bank, Bonnyrigg, EH19 3FD (“the Applicant”)**

**Ms Anna Rusowicz, 35 Laurelbank, Dalkeith, EH22 2JH (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Sandra Brydon (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it could decide the application without a Hearing and that it was reasonable to issue an Eviction Order against the Respondents**

**Background**

1. By application dated 8 April 2024, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, which commenced on 25 June 2018 at a rent of £675 per month, a Notice to Leave dated 10 January 2024 advising the Respondent that an application to the Tribunal under Ground 1 would not be made before 7 April 2024 and a letter from an estate agent confirming the Applicant’s instructions to sell the Property.

**Case Management Discussion**

3. A Case Management Discussion was held by means of a telephone conference call on 19 August 2024. The Respondent stated that she did not oppose an Eviction Order, but that she had nowhere else to go. She lived alone and had

suffered two recent bereavements. She suffers from depression and had sought advice from her doctor. She could not afford an alternative private let, due to the very difficult and expensive rental market in Edinburgh. The local authority had told her that she needs to get something in writing from the Tribunal to confirm she is being evicted and with an exact date before she will be given any sort of priority.

4. The Applicant's representative told the Tribunal that the Applicant requires to sell to pay back her mortgage which is coming to an end and to provide money for her children to get on to the property ladder. The Applicant is in her 60s, so obtaining a new mortgage might not be possible.
5. The Tribunal decided to fix a full evidential Hearing to determine the application.
6. The Tribunal issued Directions to the Parties on 19 August 2024. The Applicant was directed to provide any documentation on which she sought to rely to substantiate her position in support of Ground 1, including documentation confirming the date on which her present mortgage comes to an end, the amount outstanding, available equity, the prospects of re-mortgaging and any relevant communication with the Respondent advising her of the Applicant's position prior to serving the Notice to Leave or offering to sell the Property to the Respondent. The Respondent was required to provide evidence of any application for social housing and of her personal and financial circumstances, and any relevant communications with the Applicant or her letting agents regarding her financial situation and any relevant medical evidence, including a doctor's report, that she wishes to produce.
7. On 28 August 2024, the Respondent replied to the Direction. She provided a copy of representations to the Tribunal of 4 August 2024, in which she stated that she had started pharmacotherapy in August 2023 and psychological therapy in January 2024. On 18 January 2024, her partner had died suddenly and on 21 June 2024 a friend, who was to be helping her to find a new home died in a motor-cycle accident. She had had to deal with organising the funerals and with the estate of her partner. Her view was that the only option open to her is a council house, as she does not have the money to rent privately for herself, her child and two cats. She provided the Tribunal with evidence of communication with the local authority following the death of her partner. They signposted her to Shelter and Citizens Advice Scotland. She also provided a copy of an email of 17 March 2024 to the letting agents asking them to send her an offer to sell the Property and stating that she was also interested in the agents' proposal to find her a new house to rent, but that it must be nearby as she has a job in the area.
8. The Respondent included with her representations a letter from Midlothian Health & Social Care confirming that she had started psychological therapy on 8 January 2024 and a letter of 17 April 2024, from NHS Lothian, in which her Counselling Psychologist told her she was happy to hear from any other professionals to support the Respondent's efforts to find other housing. The psychologist said that she shared the Respondent's opinion that her mental health difficulties mean that she needs additional support to access housing

after her current living situation becomes untenable. A letter from Midlothian Council Housing Services Department of 7 September 2023 advised the Respondent that her application for housing was due for review, and the Respondent also provided a copy of an email in which the Council's Homelessness Department told her that she is not homeless unless her landlord takes steps, including a Tribunal application, to evict her.

9. On 16 September 2024, the Applicant's agents advised the Tribunal that the Applicant's mortgage has three years left to run and that £28,000 is due to be repaid then. They stated that the Applicant is no longer working, due to ill health, and that she is of an age where she will not be eligible for a re-mortgage or to obtain a new mortgage. She had confirmed to them that she has had two heart procedures and that her anxiety is very bad, and the stress of the present proceedings is not helping. She wants to sell her parents' home as it was their wish for the two grandchildren, when of age, to help them with their first homes. She has no more rented properties.

### **The Hearing**

10. A Hearing took place by means of a telephone conference call on the morning of 6 November 2024. The Applicant was not present, but was represented by Mrs Jacqueline Barr of AM Lettings, Dalkeith. The Respondent was also present. She was accompanied by a Support Worker, Julie Woods, who was not, however, her representative, and had the aid of a Polish translator, Mr Lukasz Pulawski.
11. The Respondent told the Tribunal that she has a daughter, aged 20, who attends university but stays with her outwith term time. The Respondent did not oppose the Eviction Order. She accepted that the Applicant was entitled to recover possession of the Property. Her support worker confirmed that a homelessness assessment meeting has been booked for tomorrow, in anticipation of the Tribunal's decision, but that the local authority will do nothing to assist the Respondent to be rehoused unless and until an Eviction Order was made with a date for its enforcement. The Respondent told the Tribunal that it would be reasonable to make an Order and that she was not asking for additional time before it could be enforced, as a delay would leave her in limbo for longer.

### **Reasons for Decision**

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
13. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is

an eviction ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

14. The Tribunal was satisfied from the evidence provided by the Applicant and the letting agents and from the letter from the estate agents that the Applicant intends to sell the Property. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
15. The Tribunal noted that the Respondent was not opposing the application and that she accepted that the Applicant should be entitled to recover the Property. The Respondent's view was that she could not afford another tenancy in the private sector and that social housing was her only option, but she would receive no rehousing help from the local authority until an Eviction Order was issued against her. The Tribunal also noted that the Respondent appears to have good support around her to help her through the process.
16. The Tribunal also accepted that, due to her age, the Applicant might not be able to remortgage the Property when her present mortgage deal comes to an end.
17. Accordingly, having considered carefully all the evidence before it and the representations of the Parties, the Tribunal decided that it would be reasonable to issue an Eviction Order.

## **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:**  
George Clark

**Date: 6<sup>th</sup> November 2024**