



**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/24/1998**

**Re: Property at 32 Windsor Road, Penicuik, EH26 8EA (“the Property”)**

**Parties:**

**Ms Martine Saltoun, 160 Rose Street, Somerfield, Christchurch, New Zealand (“the Applicant”)**

**Ms Vicky Robertson residing at 32 Windsor Road, Penicuik, EH26 8EA and Mr Paul Barnsley residing at 58E Monkton Hall Terrace, Musselburgh, EH21 6ES (“the Respondents”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted in favour of the Applicant.**

**Background**

1. This is an application by the Applicant for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT had been granted by the Applicant to the Respondents commencing on 21<sup>st</sup> January 2019.
2. The application was dated 1<sup>st</sup> May 2024 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 16<sup>th</sup> January 2024, issued in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*,

served upon the Respondents by email, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 13 April 2024.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon North Lanarkshire Council on 23<sup>rd</sup> June 2023 was included in the application papers.
5. The application papers included an affidavit signed by the Applicant in New Zealand on 26 May 2024, together with written evidence of the Applicant’s mortgage payments in relation to the Property. The Applicant had also lodged various emails including emails with a sales agent in which the Applicant confirmed that she intended to sell the Property as soon as the Property was vacant.

## **The Hearing**

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 11<sup>th</sup> November 2024 at 1000.
7. The Applicant did not join the conference call, but she was represented on the call by Mrs Jacqueline Barr from AM Letting. The Applicant had given Mrs Barr authority to act on the Applicant's behalf in relation to this application.
8. The Respondents did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondents by Sheriff Officers on 3 October 2024. The Respondents have not made any written representations to the Tribunal in advance of the CMD. The Tribunal is satisfied that the Respondents have been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) have been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.
9. The Second Respondent vacated the Property over two years ago. The Second Respondent remains a tenant under the terms of the tenancy agreement between the parties.
10. At the CMD, the Applicant’s representative confirmed that the application for eviction was insisted upon. In her affidavit the Applicant has confirmed that she is now resident in New Zealand. The Applicant has confirmed that she has significant health problems. The Applicant has confirmed that she is receiving state benefits in New Zealand. The Applicant has confirmed that she has no income from the United Kingdom other than from rental income. The Applicant has confirmed that the rental income at the Property is making a loss when

compared to the mortgage payments which she makes in relation to the Property. The current mortgage payments which the Applicant makes in relation to the Property, as disclosed in the Applicant's mortgage statement, are £736 per month. The current rent received in relation to the Property is £690 per month. In her affidavit the Applicant confirms that she intends to sell the Property.

11. The Applicant has explained in her affidavit that the Respondents are aware that the Property will be sold. The First Respondent, who continues to occupy the Property, has advised the Applicant that she intends to vacate the Property if an eviction order is granted. The Applicant's representative explained to the Tribunal that she understood that the First Respondent had received advice from the citizens advice bureau. The First Respondent has been advised that the local authority will make an offer alternative accommodation to her only when the tribunal has granted an eviction order.
12. The Applicant has exhibited to the tribunal copies of emails between the Applicant and estate agents in which the Applicant confirms that the agents are instructed to proceed to market the Property for sale.

#### **Findings in Fact.**

13. The Applicant let the Property to the Respondents under a Private Residential Tenancy which commenced on 21 January 2019 ("the Tenancy").
14. Notice to Leave was emailed to the Respondents on 16 January 2024. The notice to leave relied upon Ground 1 of Schedule 3 part 1 of the 2016 Act
15. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Midlothian council on the Applicant's behalf on 1 May 2024.
16. The Applicant has instructed an Estate Agency to market and sell the Property.
17. The Applicant intends to sell the Property, and it is reasonable that an order for eviction is granted

#### **Reasons for Decision**

18. The application is in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
19. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

(1.)...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.
- (2) 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.

20. The Applicant has engaged agents to sell the Property. The Applicant wishes to sell the Property as she no longer considers that it is financially viable to let the Property. We were satisfied on the evidence that the Applicant has a genuine intention to sell the Property and that Ground 1 of Schedule 3 to the 2016 Act had been established.

21. The Tribunal also considered whether it was reasonable to issue an eviction order.

The Tribunal accept that the Applicant wishes to sell the Property as it is no longer financially viable for her to continue to let this Property. The mortgage payments which the Applicant requires to make in relation to the Property exceed the current rental charged for the Property.

The Respondents have not entered appearance before the Tribunal. The Second Respondent is no longer residing at the Property. The First Respondent has advised the Applicant that she wishes the order to be granted to allow her to move forward her application for alternative housing with the local authority. The Applicant had been advised by the first Respondent that, if an order for eviction is granted, the first Respondent is likely to be rehoused by the local authority.

In all the circumstances the Tribunal are satisfied that it is reasonable to grant an order for eviction.

22. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

23. The Tribunal consider that in the circumstances of the case it would be appropriate to allow the Respondents a period of time to remove from the Property to allow them the opportunity to seek alternative accommodation. Mrs Barr, on behalf of the Applicant, did not oppose the Tribunal's proposal to allow the Respondents a period of time to remove from the Property. Accordingly, the

Tribunal have determined that the order for possession should not be executed prior to 12 noon on 6 January 2025.

## **Decision**

- 24.** In all circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act.

## **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.**

Andrew Cowan

**Andrew Cowan**

**11 November 2024**

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**Legal Member/Chair**

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**Date**