



**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/24/0865**

**Re: Property at 11 Loudon Street, Strathaven, ML10 6LY (“the Property”)**

**Parties:**

**Ms Linda Haime, 2 Lang Court, Glassford, Strathaven, ML10 6AY (“the Applicant”)**

**Ms Susan Collins, 11 Loudon Street, Strathaven, ML10 6LY (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Mary Lyden (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 20 February 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) and Ground 1A (landlord intends to sell to alleviate financial hardship). However, Ground 1A was subsequently removed from the application and it proceeded solely on the basis of Ground 1. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the notification to the local authority in terms of Section 11 of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the eviction ground,

including a copy Home report and missives in respect of a proposed sale of the Property.

2. Following initial procedure and submission of further documentation by the Applicant on 16 May 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 on 14 June 2024.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 23 October 2024 was served on the Respondent by way of Sheriff Officer on 19 September 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.

### **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 23 October 2024 at 2pm, attended by the Applicant, Ms Linda Haime and her solicitor, Mr Alistair Buttery of Whyte Fraser & Co, solicitors. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, Mr Buttery was asked to address the Tribunal on the application and the order sought. Ms Haime also addressed the Tribunal in detail regarding her situation and the background circumstances and answered a number of questions from the Tribunal Members.
6. Mr Buttery referred to the Notice to Leave served on the Respondent some time ago, in October 2023, which gave notice of the Applicant’s intention to sell the Property and the basis of her decision for doing so. The Respondent permitted access to the Applicant’s estate agents for purposes of a Home Report and viewings and an offer was subsequently received for the Property which was accepted. Missives were not, however, able to be concluded as the Applicant did not have vacant possession. Due to delays in the Tribunal process in getting a date for the CMD, the Respondent remains in possession a year after being served notice. An estate agent is still instructed and the Applicant maintains a genuine intention to sell the Property as soon as she can. The main reason for the Applicant’s wish to sell is that it has become financially uneconomic to keep the Property on. The Applicant has always kept the rent low to assist the Respondent who receives benefits. However, the Applicant’s mother is in ill-health and there were also concerns about the Applicant’s husband’s job security. The Property has become a financial burden to the Applicant and also a burden in terms of maintenance and management of the Property. In terms of reasonableness, Mr Buttery submitted that the test was met, in these circumstances.
7. Ms Haime provided some further information. In respect of the Respondent, Ms Haime confirmed that the Respondent is in her late 40s and lives alone.

Universal Credit pays her rent and she may have some health issues. She does not work but does get out and about with her dog. Ms Haime is aware that the Respondent has a strong desire to stay in the area and that she was struggling to obtain alternative housing to move to. Ms Haime understands that the Respondent had approached the local authority and essentially been told that her application for housing with them would not really progress until an eviction order was granted by the Tribunal. Ms Haime confirmed that she had always had a good relationship with the Respondent and her rent had been paid fine. Ms Haime spoke to her about the proposed sale and, although the Respondent was upset, she did cooperate with the Applicant and let her estate agents in to conduct viewings and for preparation of the Home Report. The sale of the Property was agreed in January 2024 and Ms Haime confirmed that she still has a purchaser waiting. Ms Haime said that she had not had as much communication with the Respondent recently and thinks this is because the Respondent was unable to secure alternative housing to enable her to move out. However, Ms Haime confirmed that the Respondent has a caseworker at the local authority and that, just a few days ago, Ms Haime had received an email from the Respondent, attaching a letter from the local authority, which was offering her a property. The Respondent had not viewed it yet but was hopeful that it would be suitable. Ms Haime had hoped that the Respondent might attend the CMD or advise the Tribunal of the position.

8. As to the Applicant's own circumstances, she confirmed that there were several reasons for her wanting to sell this Property. In addition to what Mr Buttery had said about her financial position, the Applicant confirmed that she has two teenage sons, one of whom is starting university. The Applicant is a registered nurse and she is moving her mother in to live with them due to her mother's health issues. Ms Haime explained that she has two other properties that are currently let out but that she had almost become an 'accidental' landlord in relation to these, as one had been her grandparents' house and the other her father's. She stated that she is likely to sell one of these at some point and just keep one on. However, the reason she is wishing to sell this particular Property at the present time is due to the financial factors mentioned. This Property has a low rent, compared to the others and is also not factored, whereas the other two are factored by the local authority. Ms Haime explained that she has had to bear the cost of several high cost repairs to the Property and, as it is not factored, this is much more difficult for her to manage herself.
9. Mr Buttery added in summing up that Ms Haime had been very open, honest and candid in the information she had provided to the Tribunal. He mentioned that it has been an unfortunate and frustrating situation for both the Applicant and the Respondent, with the Applicant having a genuine wish to sell for legitimate reasons but being unable to gain vacant possession of the Property. Likewise, the Respondent had not being able to progress her application for housing to enable her to move out due to the local authority requiring an eviction order to first be granted. Accordingly, in his submission it was in the interests of both parties for the eviction order sought to be granted and he urged the Tribunal to grant same today.

10. The Tribunal adjourned to consider the application in private and, on re-convening, confirmed that the Tribunal would grant the eviction order sought on the basis that it was satisfied that the ground for eviction is met and that it is reasonable for the order to be granted in the circumstances. There was brief discussion regarding the issuing of the written decision and the process which would now follow. Ms Haime and Mr Buttery were thanked for their attendance and the CMD brought to a close.

### **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 2 July 2019.
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 (84 days) was sent by email to the Respondent on 27 October 2023.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 22 January 2024.
6. The Tribunal Application was submitted on 20 February 2024.
7. The Respondent remains in possession.
8. The rent due in respect of the Property is £320 per calendar month.
9. It has become financially uneconomic for the Applicant to continue renting out the Property and she also has other financial and personal reasons for wishing to sell the Property.
10. The Property has already been marketed for sale, a Home Report prepared and an acceptable offer received from a purchaser.
11. The Respondent did not lodge any written representations nor attend the CMD.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation lodged with the application and subsequently, and the oral information provided at the CMD by and on behalf of the Applicant.

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 in respect of the marketing and proposed sale of the Property. The Applicant had provided detailed information at the CMD which satisfied the Tribunal that there was a true intention to sell as soon as possible and several reasons for the Applicant's decision to do so. The Applicant had also provided the Tribunal with some information regarding the Respondent and her current circumstances and it was clear to the Tribunal that the parties had enjoyed a good landlord/tenant relationship and that the Applicant had sympathy for the Respondent's position and the difficulties she had experienced in securing alternative accommodation. The Tribunal had noted the Applicant's understanding that the Respondent had applied for local authority housing and that, although had initially been told that the application may not progress until an eviction order is granted, it appeared that there had been some encouraging developments in recent days. The Respondent was aware of the Tribunal proceedings and had chosen not to make any written representations nor attend the CMD. In all 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 opposed to 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 in the circumstances.

## **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**

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**23 October 2024**  
**Date**