



**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 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/3251**

**Re: Property at 35 Blackstoun Oval, Paisley, Renfrewshire, PA3 1LR (“the Property”)**

**Parties:**

**Mr Zia ud din Mohammad, 1/1 16 Achray Drive, Paisley, Renfrewshire, PA2 9DJ (“the Applicant”)**

**Mr Timothy Brooks, 35 Blackstoun Oval, Paisley, Renfrewshire, PA3 1LR (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**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 16 July 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 4 of Schedule 3 to the 2016 Act (*landlord intends to live in the property*). Supporting documentation was submitted in respect of the application, including a copy of the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, some correspondence between the Applicant and the local authority’s housing department and evidence in

support of the ground, namely a statement from the Applicant explaining the background circumstances to the application and his requirement to recover possession of the Property to live in it himself.

2. Following initial procedure, on 8 August 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.
3. Following acceptance of the application, on 28 October 2024, the Applicant emailed the Tribunal to request that an additional ground of eviction (rent arrears) be added to the application as he had not received any payment of rent for the period from July to October 2024. This request was added to the case papers and therefore circulated to the Respondent and the Tribunal Members, with their case papers, for consideration at the Case Management Discussion ("CMD").
4. Notification of the application and details of the CMD fixed for 19 December 2024 was served on the Respondent by way of Sheriff Officer on 14 November 2024. In terms of said notification, the Respondent was given the opportunity to lodge written representations by 4 December 2024.
5. On 26 November 2024, the Respondent emailed the Tribunal to request a postponement of the CMD, explaining that he had health issues, had sustained an injury to his jaw four weeks prior which was currently wired and made it difficult for him to speak, that he had sought advice from the local authority and CAB and needed further time to prepare. Due to the sensitive nature of some of the information contained in the Respondent's email, it was not circulated to the Applicant. The Respondent's permission to do so was sought by email on 3 December 2024, as well as the Tribunal's request for the Respondent to submit any medical or information from CAB in support of his postponement request. No response was received until 16 December 2024 when the Respondent emailed the Tribunal, apologising for his delay responding but indicating that the metalwork had now been removed from his jaw and that he was now able to communicate. This communication was circulated to the Applicant so that he was aware of the updated position.

### **Case Management Discussion**

6. A Case Management Discussion ("CMD") took place by telephone conference call on 19 December at 10am, attended by both the Applicant, Mr Mohammad and the Respondent, Mr Brooks.
7. Following introductions and introductory remarks by the Legal Member, and an explanation as to the purpose of the CMD, Mr Brooks was asked to confirm his position in relation to the application. He indicated that he does not have a defence to the application and understands Mr Mohammad's need for the Property due to his own family circumstances. Mr Brooks has been in contact with Renfrewshire Council who are aware of his position and the Tribunal

proceedings. He has been told that he will be top priority for emergency housing if an eviction order is granted by the Tribunal.

8. The Tribunal Member explained that, in addition to being satisfied that a ground for eviction is met, the Tribunal also requires to be satisfied as to the reasonableness of granting any eviction order. Accordingly, it was explained that the Tribunal would need some further information on the circumstances and from both parties before they could consider granting an order.
9. There was brief discussion regarding the Applicant's communication to the Tribunal in October about wishing to add rent arrears as an additional eviction ground. It was explained by the Legal Member that it was not possible to add this as a ground in circumstances such as this where the rent arrears ground did not exist at the time the Notice to Leave was served (December 2023). However, parties were advised that the existence of rent arrears is a factor relevant to the Tribunal's reasonableness considerations. It was noted from Mr Mohammad that the original monthly rental was £280 and it is now 7 months since he has received any rent. Mr Brooks explained that this was entirely his fault. He referred to his health issues but explained that he has made application for Housing Benefit and has been informed recently that a backdated claim will be paid if Mr Mohammad produces a letter explaining the circumstances of the tenancy and rent owing. Mr Brooks confirmed that he would arrange for the backdated monies to be paid to Mr Mohammad who indicated that he would provide the required letter to Mr Brooks. The Legal Member confirmed that the Tribunal would not be involved in this side of things, given that this is not a payment application but noted that parties were happy to deal with this matter between themselves.
10. Mr Mohammad was asked to confirm some further details regarding the background to his application. He explained that he purchased the Property at auction with the intention of living there himself. He went through all the paperwork with his solicitor and, at worst, they thought there may be some issues with the physical condition of the Property. There was nothing to indicate that there was an existing tenant and Mr Mohammad only found this out when he subsequently visited the Property and found Mr Brooks living there. The previous landlord had apparently intended to renovate the Property but then changed his mind and just put the Property to auction. Mr Mohammad managed to recover a copy of the tenancy agreement from the letting agency who had dealt with the tenancy, which was based in England. This is how he established the start date of the tenancy, 9 May 2018, and the amount of the rent. Mr Mohammad confirmed that his circumstances are still the same. He is living with family in overcrowded accommodation and had intended to be moving into the Property when he bought it two years ago.
11. Mr Brooks advised that he is single and lives alone. His health is getting better and he hopes to return to university next year, after a year out, where he will be going into his third year. He is currently in receipt of Universal Credit and sorting out the Housing Benefit side of things. He was asked if the likely timescale for the eviction order being effected would cause difficulties for him, given the approaching festive period. However, he did not consider that an extension of

the date would be necessary and has been told that the Council will prioritise his homeless application on the order being granted.

12. The Tribunal Members briefly conferred and confirmed that, in the circumstances, they would grant the eviction order sought and that the normal timescales would apply. It was explained that the date specified in the order would be the date following the expiry of the 30-day appeal period and that formal notices would require to be served on the Respondent following that, before the eviction could be implemented. Mr Brooks was advised that the decision paperwork would be issued to him by email and that he should provide a copy to the Council as soon as possible, given the time of year. Mr Brooks confirmed he would do so and would also keep in contact with Mr Mohammad to let him know what was happening. Parties 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, having acquired title in 2022 after purchasing the Property at auction.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 9 May 2018 which he entered into with the previous owner/landlord.
3. The rent in respect of the tenancy was originally £280 per month.
4. The Applicant unknowingly purchased the Property with the Respondent as a sitting tenant.
5. The Applicant originally purchased the Property with the intention of living there himself and this is still his intention.
6. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was served on the Respondent by recorded Delivery post, said notice being sent on 12 December 2023.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 8 March 2024.
8. The Tribunal Application was submitted on 16 July 2024.
9. The parties have been in direct communication with each other for some time regarding these matters.
10. The Respondent has had some health issues and is currently in receipt of Universal Credit.

11. The Respondent admits owing approximately seven months' rent to the Applicant but is progressing a backdated Housing Benefit claim which should allow payment to the Applicant in respect of rent arrears.
12. The Respondent has made application to the local authority for housing and was told that he will be a priority for emergency homeless application on the granting of an eviction order by the Tribunal.
13. The Respondent is single and lives alone.
14. The Applicant is currently residing with family in overcrowded conditions and requires to move into the Property as soon as possible.
15. The Respondent does not contest the application and did not seek any extension on the timescale for the eviction order being implemented.

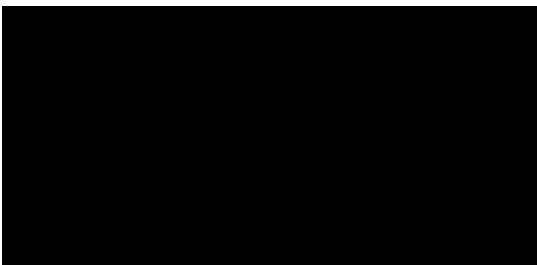
### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the Respondent's written representations prior to the CMD and the oral information provided at the CMD by both parties.
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 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 all elements of the ground for eviction, that the landlord intends to live in the Property (Ground 4 to the 2016 Act, as amended) to be met. The Tribunal was satisfied that the Applicant had originally purchased the Property at auction with the intention of living there himself and had not been aware of the existence of the tenancy until afterwards. The Applicant's own living circumstances are overcrowded and, having waited two years to get to this point, his need to move into the Property himself has become pressing. He intends to live there long-term.
4. Having heard from both parties at the CMD, the Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal considered that the background circumstances added considerable weight to the reasonableness considerations in favour of the Applicant, as did the fact that the Respondent did not oppose the eviction order being granted. Although the Respondent appears to have had a difficult time in recent months with health and related issues, the Tribunal noted that he had had advice from both the local authority and CAB and had already made application to the local authority for alternative housing. His understanding was that his homeless application will be prioritised on the granting of an eviction order.

5. The Tribunal had no facts in dispute and accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD.

### **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.**



**19 December 2024**  
**Date**