

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/2193**

**Re: 14 Rankin Street, Greenock, Inverclyde, PA16 7JL (“the Property”)**

**Parties:**

**Mr Mark Darroch and Ms Elizabeth Darroch, 13301 SE 79<sup>th</sup> Place, Unit B411, Newcastle, Washington, 98059, United States (“the Applicants”)**

**Mr Shaun Girvan, 14 Rankin Street, Greenock, Inverclyde, PA16 7JL (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

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

- (1) was satisfied that it was reasonable to deal with the application in terms of section 52(4) of the Private Housing (Tenancies)(Scotland) Act 2016;**
- (2) 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; and to defer enforcement of the order until 28 March 2025; and**
- (3) The decision of the tribunal was unanimous.**

## **Statement of Reasons**

### **Procedural Background**

1. The Applicants made an application to the tribunal on 7 May 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”). The Applicants seek the Respondent’s eviction from the Property under Ground 1 of Schedule 3.
2. The Applicants provided the following documents in support of the Application:
  - 2.1. Copy Private Residential Tenancy agreement;
  - 2.2. Copy Notice to Leave and proof of delivery;
  - 2.3. Copy section 11 Notice to the Local Authority with proof of delivery.
3. The tribunal’s administration obtained a copy title sheet for the Property dated 14 May 2024 which shows that the Applicants have been the joint registered proprietors of the Property since 10 June 2008.
4. A legal member of the tribunal requested further information from the Applicants and the Applicants provided proof of intention to market the Property for sale; tracking for attempted delivery of the Notice to leave on the Respondent between 28 November 2023 and 7 December 2023; and submissions dated 30 August 2024 in relation to service of the Notice to Leave.
5. On 24 September 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application on 29 January 2025 by teleconference at 10:00h. The Application paperwork was personally served on the Respondent by Sheriff Officers on 12 December 2024. The Respondent was told that if he wished to submit written representations these should be sent to the tribunal by 31 December 2024.
6. A Direction dated 24 September 2024 was issued to the Applicant requesting representations under section 52(4) of the Private Housing (Tenancies)(Scotland) Act 2016 as to why the Tribunal should consider it reasonable to deal with the case although as a matter of fact the tenant did not receive the Notice to Leave until 7 December 2023, which meant that the end date stated on the Notice to Leave was less than 84 days after the date of service.
7. The Applicants submitted written representations.

8. The Respondent submitted written representations.

**CMD: 29 January 2025, 1000h, Teleconference**

9. Mr Darroch, one of the Applicants attended on his own behalf and on behalf of the second Applicant, his ex-spouse, from whom he has authority to act.

10. Mr Girvan, the Respondent attended. He appeared on his own and confirmed that he had sent a written response to the Application.

**Submissions by the Respondent**

11. The Respondent stated that he opposes the Application for eviction because he does not have anywhere else to stay. He said that he looks on a homeless website every Friday. He said that he has identified lots of properties which would be suitable. He said that he has a gold priority pass to get another house and they have not given him one.

12. He said that he lives in the Property with his two children and they are 8 and 11. He is a single parent and they reside with him full time.

13. He said that he had a meeting with the homeless centre in Greenock ages ago and that they said that they were going to try to find him a house. The authority contacted a housing association and he was put on a priority status. He has made them aware that eviction proceedings have been raised. He has told them that there is a CMD today at which an eviction order may be made. He said that there was no discussion about what would happen if an order is made today.

14. Mr Girvan said that he has also looked into private accommodation but they are far too expensive in the catchment area for his children's schools, around £900 per month. His rent was £425 per month. However, at the moment he is paying nothing as he was told not to pay by Slater Hogg as the house was uninhabitable. He said that environmental health came out over a year ago. Mr Girvan said that he has had to pay someone else to live in another property because his children were not well as a result of the dampness in the house. He has been told that it is not safe to stay in the building. He stays with a friend and gives them the rent money. She is not a partner. He said that he has told the local authority that he is living in their house and that has not changed his priority status. He said that he has been living in that property for months. He said that he still stays in the Property sometimes but not a lot, similarly his children still stay in the Property sometimes but not a lot.

He said that one of his children ended up with breathing problems and that doctors at the GP practice in Greenock said that it was a result of the dampness and the mould in the Property.

15. Mr Girvan said that he is doing everything he can to find another property. He said that he would contact the Council if an eviction order is made.
16. He said that he had the Legal Service Agency helping at one point and that he is still getting support from them.

### **Submissions by the Applicant**

17. Mr Darroch said that the Applicants are seeking an order for eviction because they want to sell the Property. He said that they served the eviction notice. It was drafted on 21 November 2023 and handed to Royal Mail by the letting agents. It was not received by the tenant until 7 December 2023 due to a delay by Royal Mail delivery (tracking has been lodged). The notice period itself expired in February 2024. They did not raise the eviction application to the tribunal until May 2024, so they did not raise the application immediately after the notice had expired.
18. Mr Darroch said that the tenant has not been paying rent for over a year. There was an environmental health order issued. The property has had condensation issues. There was a rising damp issue. They agreed that no rent would be payable from the tenant while they were trying to resolve the problem. He contacted a couple of surveyors to assess the property and got quotes to have the work carried out. There was work required to the external property which is responsibility of Riverclyde Homes to arrange. Unfortunately it took 8 or 9 months for Riverclyde to perform those repairs before Mr Darroch could do repairs on the inside. Once they were done at the end of last year, he contacted companies for the internal repairs. He has received a quote and he is trying to progress that. The dampness could still come into the property. He is not able to contact Mr Girvan. His agents have been aware because he has copied in all the emails he has been sending. The agreement as to rent remains in place until the repairs have been carried out on the inside.
19. It is the Applicants' intention to sell the property. They have been renting the property for 10 years now. They no longer live in the country. They do not have any intention to come back to the country. They wish to sell the property so that they no longer have the burden of the mortgage, which is in joint names with his ex partner. They are not receiving rent but still having to meet monthly mortgage payments.

20. They have an agreement with the estate agent that they can market the property when vacant. It would be their intention to market for sale once the repairs are done, within three months of any eviction order.

### **Further submissions by the Respondent**

21. Mr Girvan has not been made aware of external repairs being done other than a repair to guttering but it has not solved any issues. He thinks that the neighbouring properties in the street also have dampness issues.

22. He said that he is staying 8 or 10 nights per month in the Property without his children when they visit their mum.

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

23.1. The Applicants are the joint registered proprietors of the Property.

23.2. There is a private residential tenancy agreement between the Applicants and the Respondent for the Property which started on 13 May 2019.

23.3. On 7 December 2023, a Notice to Leave dated 21 November 2023 containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondent with a letter dated 21 November 2023.

23.4. There were Royal Mail delays in delivery of the Notice to Leave to the Respondent.

23.5. The Applicants did not give the Respondent at least 84 days' notice that they require possession in the Notice to Leave.

23.6. More than 84 days elapsed between the date of service of the Notice to Leave and the Application to the tribunal.

23.7. The Application to the tribunal was made on 7 May 2024.

23.8. The Applicant intends to sell the Property on the open market or at least market it for sale within three months of vacant possession.

- 23.9. The Applicant has instructed an estate agent in relation to the sale.
- 23.10. There are dampness issues in the Property.
- 23.11. The Respondent has not paid any rent for around a year by agreement with the Applicants, due to the necessary repairs to resolve dampness issues.
- 23.12. The Respondent and his children are residing most of the time in another property belonging to a friend, due to the condition of the Property.
- 23.13. Riverclyde Homes are responsible for the fabric of the building. They delayed carrying out external repairs.
- 23.14. The external repairs were completed at the end of 2024.
- 23.15. The Applicants intend to carry out internal repairs and then market the Property for sale.
- 23.16. The Respondent and his children are living in another property with a friend for most of the time, due to the condition of the Property.
- 23.17. The Applicants, through their letting agent, agreed that no rent would be paid until the internal repair work has been carried out.
- 23.18. Since the Notice to Leave was served in December 2023, the Respondent has informed the local authority that he requires alternative housing for him and his children and they have not yet provided a suitable property.

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

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

## **Discussion**

25. The tribunal was satisfied that it was reasonable to deal with the case in terms of section 52(4) of the Private Housing (Tenancies)(Scotland) Act 2016. As a matter of fact the tenant did not receive the Notice to Leave dated 21 November 2023

until 7 December 2023, due to delivery delays by Royal Mail and the Respondent not calling for the letter, which meant that the end date stated on the Notice to Leave was less than 84 days after the date of service. However, the Application to the tribunal was not made until 7 May 2024. The first CMD was in January 2025. There were no submissions made that the notice period has caused any prejudice to the Respondent.

26. 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.

27. 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 but to defer enforcement of the order until 28 March 2025, to allow the Respondent additional time to seek alternative accommodation for him and his family from the local authority.

### **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.**

**29 January 2025**

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