

# 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 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/2742**

**Re: Property at 43 Oak Avenue, East Kilbride, G75 9ED (“the Property”)**

**Parties:**

**Mrs Heather Smith, residing at 73 Applegate Drive, East Kilbride, G75 9FU (“the Applicant”) and**

**The Property Store EK Ltd, 6 Hunter Street, East Kilbride, G74 4LZ (“the Applicant’s Representative”) and**

**Mr Alexander Blake residing at 43 Oak Avenue, East Kilbride, G75 9ED (“the First Respondent”) and**

**Ms Courtney McLean formerly residing at 43 Oak Avenue, East Kilbride, G75 9ED, then at 1 Harelaw Crescent, Paisley, PA2 8NH and whose present address is unknown (“the Second Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**M Lyden- Ordinary Member**

**Decision**

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

**Background**

1. This Application, contained in papers lodged with the Tribunal, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant’s Representative had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”),

the Notice to Leave (“NTL”) served on the Respondents and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to South Lanarkshire Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. Sheriff Officers served copies of the Application papers, Guidance Notes and notification of the CMD on the First Respondent Mr Blake personally on 14<sup>th</sup> November 2024. On the same date Sheriff Officers attended at the address 1 Harelaw Crescent, Paisley, PA2 8NH and were told by the resident Ms D. Montgomery that Ms McLean is her son’s partner and they reside at another private tenancy in Paisley. Ms Montgomery was unable to provide details of the tenancy address to the Sheriff Officers. The Tribunal’s office thereafter served details of the Application on Ms McLean by advertisement on the Tribunal’s website from 9<sup>th</sup> December 2024. The Sheriff Officers’ Certificate of Intimation of Service on Mr Blake, their correspondence in respect of their attempted service on Ms McLean, and the Tribunal’s Certificate of Intimation by advertisement on their website were all produced.

#### **Case Management Discussion on 19<sup>th</sup> December 2024**

4. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 19<sup>th</sup> December 2024. The Applicant’s Representative’s Ms A. Kelly attended. Neither of the Respondents, Mr Blake and Ms McLean, attended. There was no explanation for their absence and they were not represented. Ms Kelly stated that the landlord Mrs Smith requires to sell the Property and intends to do so, through her Representative, for financial reasons. She referred to the Representative’s letter to Mrs Smith dated 19<sup>th</sup> March 2024, confirming their instructions in respect of the proposed sale, which was within the Application papers. She said that following service of the NTL, dated 20<sup>th</sup> March 2024, arrears of the rent, in the sum of £1,255.76, had arisen. Ms Kelly stated that consequently Mrs Smith had been unable to make her mortgage payments in respect of the Property. She said that Mrs Smith previously resided in the Property prior to marriage and it is her only let property. Ms Kelly stated that the Second Respondent Ms McLean had sent an e-mail to the Representative in August 2023 to state that she had moved out of the Property. Ms McLean was due to liaise with the Representative with a view to being removed as a party to the Tenancy Agreement but did not do so. The Representative subsequently traced Ms McLean to the above address at 1 Harelaw Crescent, Paisley but has not had any communications from her. Ms Kelly further stated that she last met Mr Blake during an inspection of the Property on 3<sup>rd</sup> October 2024. She said that Mr Blake told her that he had applied to South Lanarkshire Council for housing and in turn had been told that the local authority could not deal with his application until an eviction order was granted. Ms Kelly said that Mr Blake informed her that he would therefore remain in the Property until a formal eviction order was granted. Ms Kelly stated that Mr Blake is 23 years of age, and works part time in the car repair industry. She said that he has been residing alone in the Property since Ms McLean left their relationship and does not have any dependants. Ms Kelly submitted that

the ground of eviction, namely that Mrs Smith wishes to sell the Property, was met and that, in all the circumstances, it is reasonable that an order be granted.

### **Statement of Reasons**

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (1) (1) of the 2016 Act provides that it is an eviction ground that a landlord intends to sell the let property and confirms the criteria for the grant of an eviction order on this ground.
7. The Tribunal considered the Application papers, including the PRT, NTL and supporting papers, and the statements and submissions made by Ms Kelly. Having done so the Tribunal found in fact that Mrs Smith seeks recovery of the Property in order to sell it and that Mr Blake intends to obtain alternative, social housing. The Tribunal found in law that Ground 1 in Schedule 3 to the 2016 Act is satisfied and that it is reasonable to make such an order. In reaching their decision the Tribunal relied in particular on the statements and submissions of Ms Kelly as well as the fact that neither Mr Blake nor Ms McLean had lodged any representations with the Tribunal or attended the CMD to provide any evidence, and/or make any submission, to oppose and contradict the order sought by Mrs Smith, and the basis for seeking the grant of that order.

### **Decision**

8. The Tribunal therefore makes an eviction order as sought in this Application.

### **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.**

Gerald McWilliams

**19<sup>th</sup> December 2024**

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**Tribunal Legal Member**

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**Date**

