



**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”)**

**Chamber Ref: FTS/HPC/EV/24/4338**

**Re: Property at 40 Mitchell Crescent, Cowdenbeath, KY4 8DY (“the Property”)**

**Parties:**

**Denise Mahmood, 12 Dover Park, Dunfermline, KY11 8HU (“the Applicant”)**

**Sharon Livingstone, 40 Mitchell Crescent, Cowdenbeath, KY4 8DY (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent. The Tribunal delayed execution of the order until 5 August 2025.**

**Background**

1. An application was received from the Applicant’s solicitor on 16 September 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 12 August 2019.
  - (ii) Copy notice to leave addressed to the Respondent dated 29 January 2024 citing ground 1, and stating the date before which proceedings could

not be raised to be 25 April 2024, together with proof of delivery on 30 January 2024.

- (iii) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council, together with proof of sending by email on 16 September 2024.
- (iv) Copy home report relating to the property prepared for the Applicant by Allied Surveyors dated 7 March 2024.

3. The application was accepted on 15 October 2024.
4. Notice of the case management discussion (CMD) scheduled for 3 April 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 18 February 2025. The Respondent was invited to submit written representations by 8 March 2025.
5. Written representations were received from the Respondent on 10 March 2025.
6. The Tribunal issued a direction to the Applicant on 7 March 2025 directing her to provide further information regarding the ownership of the property. A response was received on 19 March 2025.

### **The case management discussion**

7. A CMD was held by teleconference call on 3 April 2025. The Applicant was represented by Miss Alexandra Wooley of Bannatyne Kirkwood France solicitors. The Respondent was present on the teleconference call. She was accompanied by a supporter, Miss Jodie Lawrence, her support worker from Fife Private Rented Solutions.

### **The Applicant's submissions**

8. Miss Wooley told the Tribunal that the Applicant intends to sell the property as soon as possible. The property and the Applicant's own home are the only properties she owns. She had a interest only mortgage over her own home which expired in 2023 and she now requires to repay the capital sum due. The only way she would be able to do this is to sell the property, over which there is no outstanding mortgage, and use the sale proceeds to repay her own mortgage debt.
9. The Applicant had told her mortgage lender's end of term team when the interest only mortgage expired that she planned to sell the property to repay the outstanding debt. On that basis, the lender had been patient and had transferred the matter to a different internal team. The Applicant had served the

Notice to Leave on the Respondent on 29 January 2024, and had instructed a home report in March 2024. The Respondent had not moved out of the property and the Applicant had then raised tribunal proceedings. It had taken more than 6 months to reach the CMD stage and the Applicant's lender had indicated in January 2025 that the matter would be transferred back to its end of term team.

10. The Applicant is therefore keen to sell the property at the earliest opportunity, as she fears that her own home could be repossessed if she cannot pay off her outstanding balance, and could therefore be made homeless herself.
11. The Respondent had been aware for more than a year that the Applicant intends to sell the property. The Respondent also owes the Applicant rent arrears, and the Applicant feels she has no alternative but to sell the property as soon as possible. There is a duty on the local authority to assist the Respondent to find alternative accommodation. It would therefore be reasonable to grant an eviction order against the Respondent.

### **The Respondent's submissions**

12. The Respondent told the Tribunal that the Applicant (whom it later transpired is the Respondent's aunt) had told her last year that she did not intend to sell the property, and had instructed the home report only because she wanted a valuation of the property. She also said that the Applicant had previously rented out two shops and two flats, but had sold these last year.
13. While she initially stated that she opposed the application, it became clear that in fact she accepted that the Applicant's circumstances had changed and that she would have to move out of the property. She was very worried about being made homeless and in particular did not want to end up living in temporary homeless accommodation. In her written representations received on 10 March 2025, she had asked to be allowed to remain in the property for 6-12 months to give her time to recover her health and to find somewhere else to live. The Respondent confirmed to the Tribunal that she still sought a period of this length should an order be granted, to afford her more time.
14. She told the Tribunal that she had been in contact with Fife Council shortly after receiving the notice to leave in January 2024. She had made a homelessness application to the council and to Kingdom Housing Association. She had been told that there was a housing crisis and that it could take up to 2 years to be given permanent accommodation. She was in regular contact with a Housing Officer at the council and contacted them every time she became aware of a property becoming empty in the area. She was also in contact with Frontline Fife, which had been helping her to look at other rental properties in the area.

15. Miss Lawrence was also helping her to look for private rented accommodation that would meet her needs. Most private sector rents were above her budget and the local housing allowance. She has not been offered any alternative accommodation by the council or the housing association to date. She feared that she would end up in scatter accommodation or a hostel, given what she had been told by the council. She did, however, confirm, when asked by the Tribunal, that the council had told her they could not offer her alternative accommodation until an eviction order had been granted.
16. The Respondent said that she had also sought advice from Fife Law Centre, who had told her to await the outcome of the tribunal process before contacting them again.
17. The Respondent lives alone. She is currently in receipt of universal credit, as she is on sick leave from her full time job as a cook since late January 2025. She is suffering from anxiety and carpal tunnel syndrome. She has been awaiting a hospital appointment regarding the latter condition for 3-4 months. Due to her anxiety, she needs to be close to her family, and at present both her mother and brother live very close by. She also has her granddaughter to stay overnight with her sometimes, which would not be possible if she has to move to temporary accommodation and this would be very upsetting for her.

## **Findings in fact**

18. The Tribunal made the following findings in fact:

- The Applicant is a joint owner of the property. The other joint owner, Mr Khalid Mahmood, is aware of both the eviction application and the intended sale of the property and has authorised the Applicant to act on his behalf in respect of these matters.
- The Applicant is the sole registered landlord for the property.
- There is a private residential tenancy in place between the parties, which commenced on 12 August 2019.
- The Notice to Leave was validly served on the Respondent by post on behalf of the Applicant on 29 January 2024.
- The Applicant instructed Allied Surveyors to produce a home report relating to the property which is dated 7 March 2024.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.

## Reasons for decision

19. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
20. The Tribunal considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

### ***Landlord intends to sell***

*1(1) It is an eviction ground that 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, and*

*(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.*

*(3) 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.*

21. The Tribunal determined that, as a joint owner of the property, the Applicant is entitled to sell it. In response to the Tribunal's direction of 7 March 2025, the Appellant had produced a signed mandate from the other joint owner, Mr Khalid Mahmood, dated 15 March 2025. Mr Mahmood stated in this letter that he was aware of both the eviction application and the intended sale of the property and authorised the Applicant to act on his behalf in respect of these matters.
22. The Tribunal then considered whether the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it. It noted the comments made by the Respondent that the

Applicant did not intend to sell the property. The Tribunal noted that the Applicant had produced a home report by Allied Surveyors relating to the property, which was dated 7 March 2024. The Tribunal considered that instructing and paying for a home report, rather than simply seeking a valuation, was not a step that a homeowner would take lightly unless they planned to sell it in the near future.

23. A home report is *evidence tending to show that the landlord has an intention to sell the property* within 3 months of the tenant ceasing to occupy it, in terms of ground 1 paragraph (3)(b). Having had regard to the oral evidence submitted on behalf of the Applicant, and the home report produced by the Applicant, the Tribunal determined that on the balance of probabilities the Applicant intended to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
24. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
25. There was a difficult balance to be achieved in doing so, as both the Applicant and the Respondent found themselves in difficult circumstances. The Tribunal was sympathetic to the respective situations of both parties. The Applicant is entitled to sell the property. She is experiencing financial difficulties following a divorce. She is concerned that she could be made homeless if she is unable to pay off the mortgage on her own home with the proceeds of sale from the property. She served the notice to leave more than a year ago and has been waiting for a long time for the matter to be resolved.
26. The Respondent suffers from anxiety and other health issues, and feels that she needs to stay close to family. She has been living in the property, which has four bedrooms and is not adapted in any way, for five and a half years at a rent of £590 per month. It will be difficult for her to find other private rented accommodation given her current financial situation. There is also a shortage of social rented accommodation. She is fearful of being made homeless and of being placed in temporary accommodation, where her granddaughter would not be able to stay with her overnight.
27. The Respondent does appear to accept, however, that she cannot remain in the property long term, and the council is unlikely to rehouse her without an eviction order. She has been aware for more than a year that the Applicant intended to sell the property. She is also receiving advice and support from various organisations regarding her situation.

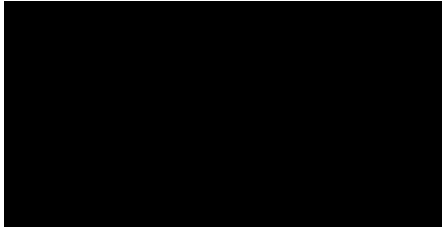
28. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the difficult circumstances in which the Applicant found herself and the lack of opposition by the Respondent, but accepted that she would have to leave the property. Her primary concern was to be given more time to recover her health and find somewhere else to live. The Tribunal was also conscious that in order to find alternative social rented accommodation, the Respondent would require an eviction order.
29. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.
30. The Tribunal was, however, mindful of the Respondent's request for an extension of time of 6-12 months. Before deciding to grant the order, the Tribunal asked the parties for their views on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, to give the Respondent more time to move into the new property if needed. Miss Wooley noted that this was a matter for the Tribunal to decide, but submitted that a period of 6 months or more would be excessive. She emphasised the urgency of the Applicant's situation and asked that any extension granted be kept to a minimum.
31. Taking all of the circumstances into account, the Tribunal determined that it would be reasonable to delay execution for three months beyond the standard period. It therefore delayed execution of the order until 5 August 2025.

## **Decision**

The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the property. The Tribunal delayed execution of the order until 5 August 2025.

## **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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3 April 2025

**Date**

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