

**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/24/3405**

**Re: Property at 109 Lawson Drive, Ardrossan, KA22 7JJ (“the Property”)**

**Parties:**

**Mr Antonio Marrocco, 40 Blinkberry Road, Currie, Mid Lothian, EH14 6AF (“the Applicant”)**

**Miss Alexandrina Docherty, 109 Lawson Drive, Ardrossan, KA22 7JJ (“the Respondent”)**

**Tribunal Members:**

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

**Decision (in absence of the Respondent)**

**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.**

**Background**

1. An application was received from the Applicant’s representative on 26 July 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 were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 4 January 2019.

- (ii) Copy Notice to Leave addressed to the Respondent dated 14 November 2023 citing ground 1, and stating the date before which proceedings could not be raised to be 9 February 2024, together with proof of sending by email to the Respondent on 14 November 2023.
  - (iii) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Ayrshire Council, together with proof of sending by email on 26 July 2024.
  - (iv) Copy letter from Glow Homes estate agents dated 18 July 2024 confirming that the Applicant had signed a sales agreement with them with regard to the property.
3. Following requests from the Tribunal administration, further information was received from the Applicant's representative on 21 August and 25 September 2024.
4. The application was accepted on 28 October 2024.
5. Notice of the case management discussion (CMD) scheduled for 29 April 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 11 March 2025. The Respondent was invited to submit written representations by 31 March 2025.
6. No written representations were received from the Respondent prior to the CMD.

### **The case management discussion**

7. A CMD was held by teleconference call on 29 April 2025. Miss Meaghan McDiarmid of Hove Park Letting represented the Applicant. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from her.
8. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondent.

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

9. Miss McDiarmid told the Tribunal that she believed the Respondent was still living in the property. There had been very little contact from her since the start

of the year. Her local housing allowance had not been received direct from the local authority as usual last week.

10. Miss McDiarmid said that the Applicant's mortgage over the property was now coming to term, and his lender had said it would not renew the mortgage. He therefore needed to sell the property. He had five rental properties including this one, and he is seeking to reduce his portfolio. As each mortgage comes to term, he is making a decision about whether he needs to sell each individual relevant property.
11. Miss McDiarmid noted that the Applicant had not raised tribunal proceedings until July 2024, several months after the date stated in the Notice to Leave, because he wished to give the Applicant more time to find an alternative property.
12. She confirmed that 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.
13. When asked whether the Applicant had considered selling the property with the Respondent in situ as a sitting tenant, Miss McDiarmid said that she believed he had taken advice from the estate agent about that. She understood that he had been advised that he would not get market value for the property if he did so, as the property was in poor condition due to a lack of maintenance by the Respondent.
14. The Tribunal asked Miss McDiarmid what she knew about the Respondent's circumstances. She said that the Respondent lives in the property with her 17/18 year old son, whom she believes is still in either school or further education. She was not aware of any health issues with regard to either the Respondent or her son. No adaptations had been made to the property for them.
15. The Respondent has been in receipt of local housing allowance throughout her tenancy. Most of her rent is received this way direct from the local authority, although she has some arrears as she has not always paid the remaining balance in full. At present, she has arrears of £683.86, including the sum which was not paid last week by the local authority. Her rent is £475.40 per month.
16. Miss McDiarmid said that the Respondent had previously received advice from CHAP, a local housing advice charity. She had also had discussions with North Ayrshire Council regarding the possibility of rehousing. Miss McDiarmid did not know the outcome of this, although she said that the Council generally tends

not to become involved until towards the end of the eviction process. She had spoken to the Respondent last year, when she had expressed her frustration at the length of the eviction process.

17. Miss McDiarmid asked the Tribunal to grant an eviction order in favour of the Applicant.

### **Findings in fact**

18. The Tribunal made the following findings in fact:

- The Applicant is the owner of the property. He owns the property jointly with Ms Lynda Rudland, who is aware of and has consented to both the tenancy between the parties and the current application.
- The Applicant is the registered landlord for the property.
- There is a private residential tenancy in place between the parties, which commenced on 4 January 2019.
- The Notice to Leave was validly served on the Respondent by email on 14 November 2023.
- 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 the owner of the property, the Applicant is entitled to sell the property. His co-owner, Ms Lynda Rudland, is aware of and has consented to the application, as evidenced by an email from her dated 20 August 2024.
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. The Tribunal noted that the Applicant had produced a letter from Glow Homes estate agents dated 18 July 2024 confirming that he had signed a sale agreement with them in relation to the property.
23. The Respondent had not disputed that the Applicant was entitled to, or intended to, sell the property. Having had regard to the oral evidence of Miss McDiarmid, and the letter from Glow Homes, the Tribunal determined that 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. The Tribunal noted that the Applicant had delayed making the eviction application to give the Respondent additional time to find another property. As at the date of the CMD, it had been more than 17 months since the Notice to Leave was served on the Respondent.
26. The Tribunal also noted that the Applicant's mortgage was coming to term and that his lender had declined to renew it. He therefore required to sell the property.

27. With regard to the Respondent, the evidence of her circumstances was limited, in the absence of either any representations from her or any appearance by her at the CMD.
28. The Tribunal noted that the Respondent has been living in the property for more than 6 years, and that her son lives with her. Neither she nor her son has any known health issues. Although she has some rent arrears, it appears that the majority of her rent has been paid directly via local housing allowance. The arrears are therefore at a low level. While the fact that her usual local housing allowance had not been received the previous week suggests that she may have found a new home, it was not possible to be certain of this in the absence of any representations from her.
29. 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 lack of opposition from the Respondent, who may have secured alternative accommodation.
30. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

### **Decision**

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

### **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.**

**S. O'Neill**

**29 April 2025**

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**Legal Member/Chair**

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**Date**