

**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4260**

**Re: Property at 22 Church Court, Kirkcaldy, KY1 1BG (“the Property”)**

**Parties:**

**LGD Property Ltd, 8 Roberts Road, Winchester, SO21 3RY (“the Applicant”)**

**Mr Christopher Henderson, 22 Church Court, Kirkcaldy, KY1 1BG (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that 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 12 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 were:
  - (i) Copy private residential tenancy agreement between Mrs Jean Clare Mitchell and the Respondent, which commenced on 24 May 2019.

- (ii) Copy Notice to Leave addressed to the Respondent dated 18 June 2024 citing ground 1, and stating the date before which proceedings could not be raised to be 13 September 2024, together with proof of sending by email to the Respondent on 18 June 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 12 September 2024.
- 3. Following requests from the Tribunal administration, various further information was received from the Applicant's representative on 15 October and 11 November 2024. This included an updated application form dated 13 September 2024 and further information regarding the Applicant company.
- 4. The application was accepted on 5 December 2024.
- 5. Notice of the case management discussion (CMD) scheduled for 24 April 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 4 March 2025. The Respondent was invited to submit written representations by 21 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 24 April 2025. Ms Ashley Divers of Rent Locally represented the Applicant and was accompanied by her colleague Mr Steven Murray. The Respondent was present on the teleconference call and represented herself.

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

- 8. Ms Divers told the Tribunal that the two directors of the Applicant company, Mr Shan Nicholas and Ms Katy Nicholas, intended to sell the property. The Applicant had bought the property in October 2022 from the previous owner with the Respondent in place as a sitting tenant. The reason for the proposed sale was that the Applicant had been losing money on the property since buying it. The rent was low (currently around £434 per month) and there was a mortgage over the property, which is a one bedroom flat.
- 9. Ms Divers confirmed that the Applicant still 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. She confirmed that the property was the only rental property owned by the Applicant. The directors of the Applicant company are

based in England and no longer wish to travel the long distance to the property when required. She also confirmed that the Applicant had considered the possibility of selling the property with the Respondent in situ as a sitting tenant. They had been advised, however, that in the current market, it would be difficult to sell the property with the tenant in situ.

10. Ms Divers asked the Tribunal to grant an eviction order in favour of the Applicant.

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

11. The Respondent told the Tribunal that he did not wish to oppose the application. He did not dispute that the Applicant was entitled to, or intended to, sell the property. He said that he would have moved out when he received the Notice to Leave, but he had been in contact with Fife Council which had advised him that to receive homelessness points, he would need an eviction order. He wished to secure council accommodation, and therefore needed an eviction order. He did not wish to look for other private rented housing, due to the risk of being evicted again if the new landlord decided to sell. He would also find it difficult to afford current private rents in the area.
12. The Respondent lives alone in the property, although his 18 year old son sometimes stays with him. He works full time as a taxi driver and while he has some ongoing mental health issues, he has no other health issues or disabilities. He said that he had always paid his rent on time.
13. In the event that he is unable to secure council housing quickly, he has friends he can stay with and can put his belongings into storage if necessary.

### **Findings in fact**

14. The Tribunal made the following findings in fact:
  - The Applicant is the owner of the property. It was registered in the Land Register as the proprietor of the property on 19 October 2022.
  - The Applicant bought the property from the previous owner, Mrs Jean Clare Mitchell, with the Respondent in situ as a sitting tenant.
  - The Applicant is the registered landlord for the property.
  - There is a private residential tenancy in place between the parties, which commenced on 24 May 2019.
  - The Notice to Leave was validly served on the Respondent by email on 18 June 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**

15. 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.
16. The Tribunal was satisfied that the Applicant was now the landlord of the property following the transfer of the title to the property into its name. The Tribunal noted that in terms of section 45 of the 2016 Act, when ownership of a property let under a private residential tenancy is transferred, the landlord's interest transfers with it.
17. 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.*

18. The Tribunal determined that as the owner of the property, the Applicant is entitled to sell the property.

19. 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 sales agreement with Rent Locally in respect of the property dated 20 June 2024, signed by Mr Shan Nicholas and Ms Katy Nicholas, the two directors of the Applicant company.
20. The Respondent did not dispute that the Applicant was entitled to, or intended to, sell the property. Having had regard to the oral evidence of both parties, and the sale agreement with Rent Locally, 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.
21. 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. The Tribunal noted that the Applicant's directors are based in England, that it owns no other rental properties and wishes to sell the property due to their financial loss in renting it out.
22. It also noted that the Respondent had been living in the property for almost 6 years, and said that he had always paid his rent on time. His previous landlord had sold the property to the current owner, which wished to sell the property without him remaining as a sitting tenant. The Respondent had no control over this situation, which would leave him homeless.
23. The Tribunal noted, however, that the Respondent appeared to accept that he would have to leave the property, and did not wish to oppose the application. He wished to find more permanent, affordable council accommodation. In order to be considered for this, he required an eviction order.
24. 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 told the Tribunal that he wished to secure permanent alternative accommodation with Fife Council. In order to do so, he required an eviction order to be granted.
25. Before deciding whether to grant an order, the Tribunal asked the Respondent for his views on the possibility of delaying execution of any eviction order in terms of rule 16A of the 2017 rules, to give him more time to secure a new property. He indicated that he did not wish to request such a delay in execution, as he considered that the standard 30 day period would give him enough time to move out and find somewhere else to live.

26. 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.**

**Sarah O'Neill**

**Legal Member/Chair**

**Date: 24 April 2025**