



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/24/4637**

**Re: 27 Almond Square, East Whitburn, EH47 8EU ('the Property')**

**Parties:**

**Gwen Kempik residing at 4 Bridgend, East Whitburn, EH470JA ("the Applicant")**

**('The Applicant's Representatives')**

**Claire Kirby, residing at 27 Almond Square, East Whitburn, EH47 8EU ("the Respondent")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) Nick Allan (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.**

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application states that the ground for eviction was as follows:  
'The Landlord intends to selling the Property for market value within three months of the tenant ceasing to occupy it. I wish to realise my investment as has always been part of my retiral plan.'

1.3 Documents lodged with the Tribunal were:-

- The undated Private Residential Tenancy Agreement between the parties. The commencement date of the Agreement was 23<sup>rd</sup> May 2024.
- Notice to Leave dated 3rd June 2024 advising the Tenants that an application will not be submitted to the Tribunal for an eviction before 30th August 2024 and the

eviction ground is that the Landlord intends to sell the Property as she needs the Property back to sell the investment as part of her retirement plan.

- Email from the Landlord to the Tenant dated 3rd June 2024 sending the Notice to Leave.
- Email from the Tenant to the Landlord dated 3rd June 2024 acknowledging receipt of the Notice to Leave.
- Email to West Lothian Council dated 5th October 2024 attaching the Section 11 Notice.
- Section 11 Notice addressed to West Lothian Council.
- Email from Brown & Co, Properties dated 5<sup>th</sup> October 2024 confirming that they have been instructed to act as selling agent for the Property.

2. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 31<sup>st</sup> October 2024, she intimated that he had decided to refer the application (which application paperwork comprises documents received on 7<sup>th</sup> and 8<sup>th</sup> October 2024) to a Tribunal.

### **3. Case Management Discussion**

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 14<sup>th</sup> May 2025.

The Applicant attended the CMD.

The Respondent did not attend and was not represented.

The Respondent had been served with a letter advising them of the CMD by Ellie McConnachie, Sheriff Officer on 3<sup>rd</sup> March 2025. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

#### **3.1 Oral Representations by the Applicant:**

3.1.1 She bought four properties approximately 18 years ago as buy to let properties with the intention of selling them when she reached 60 as they would contribute to her retirement. This plan has been delayed due to covid. She has sold two of the properties already and an eviction order has been granted for the third property. She is now 62 and needs to sell the Property. She works part time.

3.1.2 The Respondent has been tenant of the Property since 2020. A fresh lease was issued in 2024 as the Respondent and her partner had split up in 2023 and the Respondent's partner had moved out of the Property.

3.1.3 The Respondent has three children aged 9,10 and 16. They reside with her at the Property.

3.1.4 The Property is a three-bedroom property.

3.1.5 The Respondent is in receipt of universal credit and the rent payments are paid direct to her.

3.1.6 She knows the Respondent has been looking for alternative accommodation but she thinks private lets are too expensive for her. She will have to be rehoused by the Local Authority.

3.1.7 She considers it reasonable for the eviction order to be granted as she needs to sell the Property.

#### **4. Requirements of Section 109 of the Procedure Rules.**

**(a)** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

**(b)** The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The email from Brown & Co dated 5<sup>th</sup> October 2024 was sufficient in its terms.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 3<sup>rd</sup> June 2024 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 30<sup>th</sup> August 2024.

The tenant had been a tenant of the Property since 2020. The Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty-four days notice was required. The Notice to Leave had been served on the Respondent by email on 3<sup>rd</sup> June 2024. Section 3 of the tenancy agreement acknowledged that notices will be served using the parties email addresses set out in the tenancy agreement. The Notice to Leave correctly gave the Tenant a minimum of eighty-four days notice.

- (iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

**(c)** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

#### **5. Decision**

5.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.1.1 The Tribunal had a copy of the Landlord's title WLN40657 and established that the Applicant is heritable proprietor of the Property and she is entitled to sell the Property.

5.1.2 Evidence had been provided that the Applicant intends to sell the Property. The Tribunal accepted the email from Brown & Co dated 5<sup>th</sup> October 2024.

5.1.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once she obtains vacant possession.

5.2 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

*'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'*

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicant needs to sell the Property as part of her retirement planning, and the fact the Local Authority have been notified of the application and the Respondent has not lodged any written representations.

5.3 The Tribunal granted the eviction.

## **6. 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.**

# Jacqui Taylor

Jacqui Taylor

---

Legal Member

14<sup>th</sup> May 2025