

**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/24/3797**

**Re: Property at 43 Oliphant Crescent, Paisley, PA2 0DA (“the Property”)**

**Parties:**

**Marc Robertson, 10 Glebe Crescent, Kinloss, IV36 3UG (“the Applicant”)**

**Heather Johnston, 43 Oliphant Crescent, Paisley, PA2 0DA (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 10 July 2020 (but parties were agreed that the Applicant had previously let the Property to the Respondent and her former partner on a Short Assured Tenancy from 28 August 2015 until 9 July 2020).
2. The application was dated 19 August 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 18 September 2023 and served upon the Respondent by recorded delivery on that date in accordance with the Tenancy Agreement. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In

regard to Ground 1, the body of the notice referred to the Applicant seeking to sell due to increases in mortgage rates and it referred to an attached email from the Applicant stating same. The Notice to Leave intimated that an application to the Tribunal would not be made before 18 March 2024.

4. The application papers included a copy of a valuation report from Slater Hogg from January 2024, referring to an instruction to market the Property.
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Renfrewshire Council on 3 June 2024 was included in the application papers.

### **The Hearing**

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 15 April 2025 at 10:00. We were addressed by Finlay Dunsmore, Credit Control Manager, Let-It for the Applicant. The Respondent was in attendance but principally represented by her mother, Janette Johnston.
7. Prior to the calling of the CMD, submissions and productions were lodged by both parties. For the Applicant, the documents related to a redundancy consultation that he was subject to. For the Respondent, submissions and documents explained details of her and her daughter’s health issues and that she had sought a new property but had not yet obtained a suitable new home. We sought an update from both parties.
8. In regard to the Applicant, his agent confirmed that he had not been selected for redundancy during the consultation but believed that a further round of redundancies may occur in July and that he was not positive for his role in the long-term. In regard to his finances, he provided the following information:
  - a. The passing monthly rent was now £537.60. After deduction of management fees, the Applicant received £454 a month.
  - b. His current monthly mortgage was £451.96.
  - c. His current annual insurance for the Property was £506.01, being the equivalent of £42.17 a month.
  - d. At present, even excluding maintenance costs, the Property was costing the Applicant more each month than his net rental income. (We noted that, even if the Applicant was to cease instructing a letting agent, he would have only a balance of £43.47 each month to cover all maintenance and management costs. As the Applicant was currently living and working in the north of Scotland, it was understandable that he sought to engage a local letting agent.)
  - e. There had been leaks in the roof of the Property, with some temporary repairs carried out, but the Applicant believed that a full roof replacement was required in the short to medium term, and he had received a quotation for that work of £9,000.
  - f. He was concerned as to the cost of the future roof repair. He sought to sell the Property at this time, in consideration of the future repair costs, his

continued concern for the stability of his job, and the ongoing net loss each month.

- g. The Applicant's agent had made investigations into sale of the Property with the Respondent as a sitting tenant but, due to the low rent, it was not attractive to the market.
  - h. The Property had an interest-only mortgage and the Applicant's agent did not believe there was any material equity in the Property. The proposed sale was motivated by a desire to restrict losses and avoid future financial risk (if he was made redundant or needed to replace the roof) rather than raise personal funds.
  - i. The Applicant was not understood to own any other rental properties.
9. For the Respondent we noted the following:
- a. The Respondent did not dispute that the material terms of Ground 1 were satisfied (such as the validity of the Notice or the Applicant's intention to sell). She did seek to defend on the ground of reasonableness.
  - b. Her principal ground for defence on reasonableness was that she had not yet secured another suitable property. Though she would be happy to stay at the Property, she was also satisfied to move provided she was not rendered homeless or required to enter (even temporarily) accommodation that she thought to be unsuitable.
  - c. The Respondent's view of suitable accommodation was a house (not a flat) within the Foxbar area of Paisley. The reasons for the location was due to the current Property being especially suitable for the Respondent and her daughter's needs, being in walking distance of both the Respondent's aunt and sister, both of whom provide her with support. Further, the Respondent's former partner (her daughter's father) had moved from Ayrshire into the next street so he could provide parenting support. Her mother, though now living an hour away, came to stay with the Respondent's aunt three days a week also to provide support. Finally, her daughter's school was also in near walking distance.
  - d. In regard to this need for support and the specific type and location of house sought, this was on medical grounds:
    - i. The Respondent had autism and suffered from anxiety and, since a car accident, had PTSD. She was currently unable to undertake a trip anywhere (such as shopping) without being accompanied by someone. She was extremely nervous with car travel and public transport.
    - ii. The Respondent's daughter is currently on a waiting list to be assessed for a medical condition. She demonstrates a sensitivity to noise, which can result in behavioural changes in certain circumstances. The Respondent thinks this would make living in a block of flats unsuitable, due to uncontrolled noise from neighbours. Further, the Respondent is concerned about her daughter's ability to adapt to entering a home through a shared entrance.
    - iii. Her daughter demonstrates an obsessive condition known as "stimming" which, in her, manifests as repetitive jumping between different pieces of furniture. Her 8 year-old daughter jumping and landing generates noise which the Respondent expects would be unwelcomed to neighbours, if she was in a flat property.

- iv. The Respondent has received NHS and Private medical support for her conditions but both have now provided as much assistance to her as the therapists thought possible and she remained disabled by them.
- e. In regard to attempts to secure a new home:
  - i. The Respondent has investigated the private rented market but few properties that she regarded as suitable have come onto the market, and all were beyond her price range.
  - ii. The Respondent has applied for rehousing with the local authority and two local housing associations. She knows of no others who have properties in Foxbar. All three have properties outwith Foxbar but they each know that she wishes only to be rehoused in Foxbar. In any case, none have offered her anything at all.
  - iii. She has been told that she is at the highest level of housing priority but she has not yet received an offer of rehousing.
  - iv. She has been told that, if made homeless at a time when there is no suitable accommodation available, she should expect to spend around a week in B&B or other emergency accommodation and then around a year in temporary accommodation (such as rooms in a shared property). The Respondent is most concerned about this, in particularly the idea of a week in B&B accommodation.
  - v. She has considered with her family whether there was any ability to be temporarily housed with any of them, but they did not believe there was any suitable way to arrange this.
  - vi. Her family had considered whether they could assist the Respondent in purchasing the Property but this was not possible financially. Further the Respondent would not receive Universal Credit housing support to pay a mortgage.
- f. The Respondent is not currently employed and is on benefits. She is now exempt, due to her medical conditions, from needing to evidence that she is unable to seek employment.

10. Parties were agreed upon the following:

- a. There were no rent arrears, nor any other complaint as to the Respondent's conduct as a tenant.
- b. The Respondent had resided at the Property since 2015.
- c. The Property was a mid-terrace two-bedroom property.
- d. There had been water ingress issues at the Property and roof repairs had appeared to resolve these issues for now.

Along with these express agreements on facts, neither party raised any issue generally with the factual details of the other's submissions (other than as set out in the next paragraph).

11. During submissions, we noted that there was a minor dispute as to the parties' discussions on a rent increase. The Applicant's agent understood that there had been discussions last year on an increase to £600/month, which level of rent he understood the Respondent had said she was unable to sustain. The Respondent however submitted that there were current discussions direct with the Applicant regarding an offer to pay £650/month, with an absolute top limit of £700/month, but that no response had yet been received. Further, the

Respondent believed that the Applicant was awaiting the outcome of a remortgage before being able to consider the offer but the Applicant's agent suspected that the remortgage had now been concluded.

12. Other than this dispute on the state of current discussions on a rent increase, the Applicant's agent stated that his instructions were to seek eviction at the CMD. Further, each party confirmed that they were satisfied that they had provided all evidence as to their position and did not see a need to lead further evidence, nor have the other party provide any further evidence on their position.
13. We thus sought submissions from the parties on procedure. As we say, the Applicant sought a decision made at the CMD. The Respondent moved for a continuation so as allow further time for possible rehousing, and to monitor whether the Applicant was subject to a further redundancy consultation in July. Further, the Respondent submitted that such a continuation into July would permit discussions on an increased rent and withdrawal of the application. We sought the parties' submissions on any delay in an eviction date, if we were minded to grant the application today. The Applicant's agent lacked instructions but thought the Applicant may be minded to agree. In regard to any formal suspension, though neither party positively sought eviction with a suspension, both acknowledged that a suspension to a date in mid-July would permit the parties sufficient time to discuss a voluntary agreement and, if failing, allow the Respondent an opportunity to vacate during the school summer holiday period, so as to minimise disruption to her and her daughter.
14. No motion for expenses was made by either party.

### **Findings in Fact**

15. On 29 June and 1 July 2020, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 10 July 2020 ("the Tenancy").
16. This Tenancy replaced a previous Short Assured Tenancy for the Property between the Applicant and the Respondent and her former partner as joint tenants, which commenced on 28 August 2015.
17. On or around 18 September 2023, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
18. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 18 March 2024.
19. A copy of the Notice to Leave was served on the Respondent by recorded delivery on 18 September 2023 in accordance with the Tenancy Agreement.

20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 19 August 2024.
21. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Renfrewshire Council on 3 June 2024.
22. On 26 January 2024, the Applicant formally instructed Slater Hogg to value the Property in anticipation of them acting in the marketing of the Property.
23. The Applicant wishes to sell the Property with vacant possession in early course. He wishes to discontinue acting as landlord due to financial considerations, in particular:
  - a. That his current monthly mortgage, management and insurance costs for the Property are in excess of the current passing rent;
  - b. That he anticipates costs in the region of £9,000 to replace the roof of the Property in the short to medium term; and
  - c. He is concerned as to the security of his employment, having already been through one redundancy consultation.
24. The Respondent resides with her 8-year old daughter at the Property.
25. Her daughter attends a local school within close walking distance of the Property.
26. The Respondent has autism and suffers from anxiety and PTSD.
27. The Respondent's daughter is awaiting assessment for a medical condition. She demonstrates sensitivity to sound, as well as an obsessive condition which manifests as her undertaking repetitive behaviour of jumping between pieces of furniture in the Property.
28. The Respondent is reliant on support and assistance from family members and her ex-partner, all in close walking distance to the Property, as well as support from her mother who is able to visit weekly and stay with family members nearby.
29. The Respondent has made active attempts to obtain alternative accommodation but has thus far failed to identify, or be offered, a new tenancy in the local area that she regards both as affordable and as suitable for her and her daughter's needs.

### **Reasons for Decision**

30. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.

31. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1) *...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,*
    - (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.*
32. The document from Slater Hogg constitutes evidence under paragraph (3). On the basis of the submissions by the Applicant, we agreed that paragraphs (2)(a) and (b) were also satisfied. In any event, the Respondent conceded that the material requirements of Ground 1 were satisfied.
33. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicant's reasons for wishing to sell, and these were not disputed by the Respondent (and the Applicant in turn did not dispute the Respondent's reasons for seeking to remain). Both sides' submissions on reasonableness were compelling and we were obliged to both for their candour and confirmation that neither sought to lead further evidence.
34. In light of the submissions, there was no necessity for a hearing to consider witness evidence and we required to consider whether to make a decision at the CMD or continue for the reasons suggested by the Respondent. We were not satisfied that a continuation to, say, July 2025 would assist resolution of matters. Even if the Applicant was aware of commencement of a further redundancy consultation, it would be unlikely to have concluded by then, meaning a further delay in determination (and the potential for eviction being re-considered after the start of the next school year). Further, we were not satisfied that the Applicant's financial considerations – especially the cost of the roof repair – would be further clarified by a delay as, unless the Applicant was in a position to commit to instructing a roof contractor by then, he would still only possess an estimate of costs. Thus, though it is possible that the parties may reach a voluntary agreement in regard to an increased rent, there is a strong possibility that the Applicant will be in no better a position to do so if matters were delayed.
35. The Applicant seeks to sell and discontinue being a landlord in light of the financial costs at present and his concerns about future financial insecurity. These concerns will be present for the foreseeable future. We were of the view

that these considerations sufficiently outweighed the Respondent's wishes to remain, which wishes were materially a result of her not having yet been offered suitable rehousing, which was a temporary situation. Also, given the manner in which most local authorities prioritise applications, there is a significant chance that her rehousing would be prioritised if she were subject to an order for eviction. In the circumstances, we regard it reasonable to grant an order for eviction. Nonetheless, in consideration of the school term and the Respondent's interests in minimising disruption to her daughter's routine and schooling, we think it reasonable that any order to evict is subject to a suspension and we think that a suspension to 21 July 2025 (allowing the school year to end and the Respondent to have a further few weeks thereafter to pack up) is appropriate.

36. Nothing precludes the parties discussing an increased rent, in return for the Applicant agreeing not to enforce the order to evict, but we regarded it as appropriate to determine the application at the CMD given that there was no material reason not to do so.
37. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 21 July 2025.

### **Decision**

38. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above.

### **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.**

The logo for J Conn, featuring a stylized blue double-slash mark above the text 'J Conn' in a large, bold, black sans-serif font.

15 April 2025

Legal Member/Chair: J Conn

Date