



**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”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/4921**

**Re: Property at 47 Dollar Crescent, Kirkcaldy, Fife, KY2 6NU (“the Property”)**

**Parties:**

**Mrs Lynn McLean, Mr Alexander McLean, 1 Begg Cottages, Kirkcaldy, Fife, KY2 6QP (“the Applicant”)**

**Ms Janette Hamilton, 47 Dollar Crescent, Kirkcaldy, Fife, KY2 6NU (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 24 October 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Grounds 1, 5 and 11 of Schedule 3 to the 2016 Act (landlord intends to sell; family member intends to live in the property; and breach of tenancy agreement). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the notification to the local authority in terms of Section 11 of the Homelessness (Scotland) Act 2003/proof of

service of same and evidence in support of eviction grounds 1 and 5 and in respect of rent arrears. A payment application was submitted at the same time in respect of rent arrears. The applications were conjoined and proceeded through the Tribunal process together.

2. Following initial procedure and submission of further documentation by the Applicant, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 22 November 2024. Although the application was accepted, it was pointed out to the Applicant in the letter of acceptance that Ground 11 involves alleged breaches of tenancy, other than in respect of rent arrears (which fall under Ground 12). It was explained that further clarification may be required in relation to this matter at the Case Management Discussion stage.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 16 May 2025 was served on the Respondent by way of Sheriff Officer. In terms of said notification, the Respondent was invited to lodge written representations.
4. On 29 March 2025, the Respondent lodged detailed written representations explaining the reasons for the rent arrears, her personal and financial circumstances, details of some medical and health issues, her wish to move into social housing which would be more affordable and suitable to her needs, that she has applied to the local authority for housing but has been told that her application will not progress until an eviction order is granted. The Respondent submitted a time to pay application in respect of the payment application and confirmed that she was not contesting the eviction.

### **Case Management Discussion**

5. The CMD took place by telephone conference call on 16 May 2025 at 10am, attended by the Applicant's agent, Ms Gemma Forbes, Solicitor of Innes Johnston LLP and by the Respondent, Ms Janette Hamilton.
6. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the grounds for eviction being relied upon. Ms Forbes confirmed that the primary ground was Ground 1 but that Ground 5 had also been included due to the fact that it was proposed that the Property would be sold to the Applicant's son and daughter-in-law. The Applicant is not pursuing eviction under Ground 11, nor in respect of the rent arrears, given the agreed position in this matter, although the arrears were still relevant to the 'reasonableness' considerations. Ms Hamilton confirmed that she is not contesting the eviction and explained that she has always had a good relationship with the Applicant and understands the grounds on which they are seeking an eviction order.
7. Ms Forbes confirmed that this is a Private Residential Tenancy which commenced in 2023 and that a Notice to Leave had been served on the

Respondent by Sheriff Officer on 1 July 2024, stipulating Grounds 1,5 and 11 and giving the requisite amount of notice. The intention of the Applicant had originally been to try and sell the Property with the Respondent as a sitting tenant. She referred to the supporting documentation lodged. A Home Report had been obtained but they were unable to sell last year. They now plan to sell to their son and daughter-in-law who currently live in local authority accommodation and have secured a mortgage offer in respect of their proposed purchase. The Applicants are 71 and 65 respectively and they purchased the Property as part of their retirement plan. They no longer wish to let the Property out, given their age and circumstances.

8. In response to questions from the Tribunal Members, Ms Forbes stated that she did think that the Property was to be sold for 'market value', albeit to family members of the Applicant. She referred to the mortgage offer which is for the amount that the Property was valued at in the Home Report. She conceded that a fresh Home Report will require to be instructed and a fresh mortgage offer made, as both have now expired. She explained that the Applicant was awaiting the outcome of the Tribunal proceedings before instructing a further Home Report. Her understanding was that the sale of the Property would proceed as soon as possible after the Property is vacated by the Respondent and that the three-month period stated in Ground 1 would be complied with. As to Ground 5, it was intended that the Applicant's family members would move into the Property as soon as possible after it is vacated and live in the Property thereafter as their permanent family home. Ms Forbes confirmed that, as far as she was aware, this Property is the only property that the Applicant lets out. It was noted by the Tribunal that, although the PRT commenced on 5 August 2023, that the Respondent had, in fact, occupied the Property since 2010. Ms Forbes confirmed that her understanding was that the Respondent originally lived there under a Short Assured Tenancy but that, in 2023, the Applicant had offered her the updated PRT tenancy, in accordance with Scottish Government guidance. Ms Forbes submitted that, in all the circumstances, including the rent arrears situation, it was reasonable for the Tribunal to grant an eviction order today, particularly given Ms Hamilton's consent to eviction. She submitted that it appeared, in fact, to be in all parties' interests for the order to be granted. This would allow Ms Hamilton to obtain alternative and more suitable accommodation and to move on as she has stated she wishes to do.
9. Ms Hamilton was then asked some questions. She confirmed that she had first approached the local authority previously, when she had been served with a Notice to Quit prior to her being transferred over to the PRT. She thinks that the Applicant had been dealing with the matter themselves at that stage and the Notice to Quit had not gone further. The local authority had been in contact with the Applicant direct at that time and obtained all the documentation they required. Ms Hamilton confirmed that the local authority were aware of her circumstances, her housing needs from previously, and of the Tribunal proceedings. She is also in contact with Frontline Fife who will be assisting her with the matter. She understands that it is only once she provided the eviction paperwork to the local authority that they will proceed with her housing application. She has been told that there may be a two year wait for a permanent property but that her medical history may give her some priority.

She has been told that she would be provided with temporary accommodation but that this could be B & B or hotel-type accommodation initially and that, as she is single, there could be the possibility of shared accommodation which she would not be happy with. Ms Hamilton is 64 years old. She explained that, as she often cares for her father who is in his 90s, she may stay with him some nights and also spends a night a week at her daughter's house as she looks after her grandson. She confirmed that she will rely on friends and family until she gets her local authority accommodation sorted out. Ms Hamilton reiterated that she has always had a good relationship with the Applicant and that she was aware they were charging her a fair rent. She apologised for the rent arrears situation which had originally occurred due to a series of unfortunate events. However, given her limited income, she accepts that she simply cannot afford the rent and is looking for a property more suitable to her in terms of her medical needs, as well as being affordable to her.

10. Ms Forbes was asked by the Tribunal for comments on the possibility of the Tribunal exercising their discretion, if granting an eviction order, to slightly extend the usual timeframe for the eviction being enforceable in order to give Ms Hamilton a bit more time to progress alternative housing through the local authority. Ms Forbes stated that she did not have specific instructions from the Applicant on this so could not offer an extension. However, she did not think a month or two delay would cause too much difficulty for the Applicant and would leave the matter in the Tribunal's hands to decide.
11. The Tribunal Members adjourned to discuss the application and, on re-convening, advised parties that the eviction order would be granted on both Grounds 1 and 5, subject to an extension of approximately a month on the usual eviction date. The Legal Member confirmed that the earliest date for eviction to be specified in the eviction order would be 15 July 2025. Ms Hamilton was urged to provide the local authority and Frontline Fife with a copy of the Tribunal Decision to be issued shortly, as soon as possible, in order that her housing application could be progressed. It was also explained to Ms Hamilton that if she was in a position to vacate earlier, she could do so and should contact the Applicant or their agent to discuss the arrangements. Parties were thanked for their attendance and participation in the CMD.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 5 August 2023, but had occupied the Property since 2010 under a previous tenancy.
3. The Applicant intends to sell the Property to their son and daughter-in-law for market value as soon as possible and to sell/market it for sale within 3 months of obtaining vacant possession.

4. It is intended that the above-mentioned family members of the Applicant will live in the Property as their only or principal home for at least 3 months.
5. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 1 July 2024, in accordance with the terms of the tenancy agreement.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 26 September 2024.
7. The Tribunal Application was submitted on 24 October 2024.
8. The Respondent remains in possession.
9. The Applicant purchased the Property as part of their retirement plan, they are both now of retirement age and no longer wish to let the Property out.
10. The Respondent is not contesting the application.
11. The Respondent has already made application for social housing and wishes to secure alternative accommodation more suitable to her financial means and health conditions.
12. There are some rent arrears owing but the Respondent has made a payment proposal in respect of same which has been accepted by the Applicant.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation lodged with the application and subsequently, the written representations lodged by the Respondent and the oral information provided at the CMD on behalf of the Applicant and by the Respondent.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the grounds of eviction, that the landlord intends to sell and that a family member intends to live in the Property (Grounds 1 and 5 of Schedule 3 to the 2016 Act, as amended) were satisfied in that all elements of the grounds were met and that it was also reasonable, having regard to all the circumstances, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application in terms of a Home Report obtained by the Applicant in respect of the Property and a mortgage offer to the Applicant's son and daughter-in-law in respect of the

Property. The Tribunal noted the Applicant's current ages and circumstances, their wish to realise the sale proceeds of the Property to help fund their retirement and to no longer let the property out. The current family and living circumstances of the family members of the Applicant who wish to purchase the Property as their family home were also noted. It was apparent to the Tribunal that relations between the parties had always been good, despite the rent arrears situation which had arisen due to financial pressures on the Respondent who is reliant on Universal Credit. It was noted that the Applicant's original intention had been to seek a purchaser for the Property who would buy with the Respondent as sitting tenant but that this had unfortunately not proved possible. The Respondent's personal, health and financial circumstances were also taken into account by the Tribunal, as well as the fact that she had resided at the Property since 2010. However, the most significant factor for the Tribunal in this regard was that the Respondent did not wish to contest the application and, in fact, wished an eviction order to be granted to assist her with her application for housing to the local authority. The Respondent clearly felt bad about the rent arrears situation and had proposed a payment arrangement to the Applicant which was accepted. However, she was quite candid in admitting that the Property was simply no longer affordable to her and stated that she would have vacated quicker had she been in a position to do so. The Tribunal noted that the Respondent wished to obtain long-term, affordable local authority accommodation, more suitable to her health conditions, and had already applied for local authority housing and sought advice from a local advice organisation. In all of the circumstances, the Tribunal considered it reasonable to grant the eviction order sought but subject to a one-month extension on the usual timeframe for eviction, to allow the Respondent more time to progress her social housing application. The earliest eviction date to be specified in the order would accordingly be 15 July 2025.

4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing in the circumstances.

## **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.**

# Nicola Weir

---

**Legal Member/Chair**

**16 May 2025**  
**Date**

