



**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/24/5232**

**Re: Property at 12 Dalriach Court, Dalriach Road, Oban, PA34 5EH (“the Property”)**

**Parties:**

**Mr Ian Close, Northbay House, Ganavan Road, Oban, PA34 5TU (“the Applicant”)**

**Mr Glenn Brookes, 12 Dalriach Court, Dalriach Road, Oban, PA34 5EH (“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 solicitor on 13 November 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 11 February 2022.
  - (ii) Copy Notice to Leave addressed to the Respondent dated 29 July 2024 citing ground 1, and stating the date before which proceedings could not be raised to be 25 October 2024, together with proof of sending by email to the Respondent on 30 July 2024.
  - (iii) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Argyll and Bute Council, together with proof of sending by email on 13 November 2024.
  - (iv) Copy letter of instruction from the Applicant and Mrs Kirsteen Close to Dawsons estate agents dated 29 October 2024 regarding the sale of the property.
  - (v) Copy letter of engagement addressed to the Applicant and Mrs Kirsteen Close from Raeburn Christie Clark and Wallace solicitors regarding the conveyancing in relation to the sale of the property.
  - (vi) Rent statement showing that the Respondent owed outstanding arrears of £5000 as at November 2024.
  - (vii) Email from Mrs Kirsteen Close dated 6 November 2024, confirming that, as the co-owner of the property, she consented to the Applicant bringing the application for eviction.
3. The application was accepted on 9 December 2024.
4. Notice of the case management discussion (CMD) scheduled for 20 May 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 26 March 2025.
5. A request to amend the application to update the amount of rent arrears owed, together with an updated rent statement showing arrears of £8500 to be due by the Respondent, was received from the Applicant's solicitor on 6 May 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 20 May 2025 to consider both the eviction application and the accompanying civil proceedings application (reference no: FTS/HPC/CV/24/5233). Mr Aaron Doran of Raeburn Christie Clark and Wallace solicitors 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.

He did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from him.

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. Mr Doran told the Tribunal that the Respondent was still living in the property. He had been responding to the letting agent, Dawsons Estate Agents, who were in regular contact with them. He had not responded to any communication from Mr Doran regarding the application, however.
10. Mr Doran 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. The Applicant had bought the property in 2006 as a holiday home for his family as he liked the area. He had later relocated and now lives in the area. He therefore no longer needs the property and wishes to sell it. He and his wife are now retired and are living on their pensions. They can no longer afford to keep the property. They also support their adult daughter, who has autism and is in and out of work. The Applicant owns no other rental properties. The Applicant is keen to sell the property as soon as possible, before the winter.
11. With regard to the Respondent's circumstances, Mr Doran said that he is the sole occupant of the property. The Respondent does not have any disabilities to his knowledge and the property has not been adapted for him in any way.
12. The Respondent also owes the Applicant significant rent arrears. He was in arrears of £9200 as at 11 May 2025. These arrears have been accruing since January 2024, and now constitute over 13 months' worth of rent payments. The Applicant is concerned that if an eviction order is not granted, the arrears will continue to increase. He is also concerned that the property could fall into disrepair, as there have been recent difficulties in obtaining access to the property to carry out electrical testing.
13. Mr Doran told the Tribunal that the letting agent had been in regular contact with the Respondent regarding the rent arrears. He also said that he understood that the Respondent had been in contact with Argyll and Bute Council regarding social housing, and that he had been advised to remain in the property until an eviction order was granted. During the CMD, Mr Doran sent to the Tribunal an email from the Respondent to Dawson Estate Agents dated 10 October 2024.

In this email, the Respondent stated that he had spoken to the council and had been told to stay in the property until an eviction order was granted. He also said that he would make efforts to address the rent arrears due.

14. Mr Doran asked the Tribunal to grant an eviction order in favour of the Applicant.

### **Findings in fact**

15. The Tribunal made the following findings in fact:

- The Applicant owns the property jointly with Mrs Kirsteen Close, who is aware of and has consented to the application.
- The Applicant is the registered landlord for the property. Mrs Close is registered as a joint owner.
- There is a private residential tenancy in place between the parties, which commenced on 11 February 2022.
- The Notice to Leave was validly served on the Respondent by email on 30 July 2024.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.
- The rent due under the tenancy agreement is £700 per month, payable on the 11<sup>th</sup> day of each month.
- As at the date of the CMD, the Respondent owed the Applicant £9200 in rent arrears.

### **Reasons for decision**

16. 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.

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. His co-owner, Mrs Kirsteen Close, is aware of and has consented to the application, as evidenced by an email from her dated 6 November 2024.
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 letters from Dawsons Estate Agents and Raeburn Christie Clark and Wallace solicitors dated 29 October 2024 and 7 November 2024 respectively regarding the sale and conveyancing in relation to the property.
20. 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 Mr Doran and the letters from Raeburn Christie Clark and Wallace and Dawsons Estate Agents, the Tribunal determined 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.
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.
22. The Tribunal noted that the Applicant and his wife are now retired, and that their financial circumstances have changed. They are living on pensions and have a daughter with a disability who requires their support. They no longer need the property as a holiday home and wish to sell it.

23. The available evidence of the Respondent's circumstances was limited, in the absence of either any representations from him or any appearance by him at the CMD. The Tribunal noted that the Respondent owed significant arrears, which he appeared to have made no attempt to address since January 2024. No rent had been paid since July 2024. There was no information before the Tribunal as to why this was the case. The Tribunal also noted that the Notice to Leave had been sent to the Respondent almost 10 months earlier. The Respondent had therefore been aware of the Applicant's intention to sell for some time. It also appeared that the Respondent had remained in the property because he had been advised by the council that in order to obtain social housing, he would require 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, his significant rent arrears and the likelihood that he wished an eviction order to be granted in order to secure social housing.
25. 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**

20 May 2025

**Legal Member/Chair**

**Date**

