



**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/24/3882**

**Re: Property at 25 McMurdo Road, Annan, DG12 6DD (“the Property”)**

**Parties:**

**Mr Andrew Lowrie, 2 Wyseby Hillside, Kirtlebridge, DG11 3AW (“the Applicant”)**

**Richard Andrew, 25 McMurdo Road, Annan, DG12 6DD (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision (in absence of the Respondent)**

**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 22 August 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 Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and evidence in support of the ground, namely communications between the Applicant and his solicitors/estate agents regarding their instructions to act in the marketing of the Property. An application for payment

of rent arrears in the sum of £7,100 was lodged together with the eviction application and the applications were conjoined.

2. Following initial procedure, on 28 October 2024, 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.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 20 May 2025 was served on the Respondent by way of Sheriff Officer on 27 March 2025. In terms of said notification, the Respondent was given until 15 April 2025 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.
4. On 1 May 2025, written representations were received on behalf of the Applicant, requesting to amend the rent arrears owing to £10,300, in terms of Rule 14A of the Regulations. An updated rent statement was produced, together with evidence that the Applicant's solicitor had copied this paperwork to the Respondent directly by post.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by telephone conference call on 20 May 2025 at 2pm. The Applicant's representative was in attendance, namely Mr Murray Bolling of Harper, Robertson & Shannon, solicitors. The Respondent did not attend, although the Tribunal delayed the commencement of the CMD for 5 minutes to give him an opportunity to join late, but he did not do so.
6. Following introductions and introductory comments by the Legal Member, Mr Bolling was asked to confirm the Applicant's position with regard to the application. He confirmed that an eviction order was still sought on Ground 1, that the landlord intends to sell the Property. He also confirmed that there has been no engagement at all from the Respondent for over a year. Mr Bolling confirmed that the Applicant wishes to sell as he is separated from his wife and requires to sell the Property so that the proceeds can be divided between them. There is limited equity in the Property as there is a mortgage over it but the Applicant has no other way of making the required capital payment to his wife. Mr Bolling explained that he is acting for the Applicant in respect of the separation agreement and can confirm the position. The Applicant has another two properties which he lets out in the vicinity and these are in the same position, both with limited equity but requiring to be sold. One of the other properties is already empty and is up for sale and the other will follow in due course.
7. As to reasonableness, Mr Bolling advised that the Respondent already resided in the Property before this tenancy, the Property being previously owned by the Respondent's mother. The Applicant had purchased the Property following her death and acquired it in 2020, effectively with the

Respondent as sitting tenant. He was then signed up to a new tenancy and, unfortunately a copy of the tenancy agreement is missing, although the signing pages have been produced, indicating that it was signed by both parties on 12 November 2020. Mr Bolling explained that the tenancy management had previously been handled by the Applicant's wife and he had been unable to obtain a copy of the tenancy paperwork from her. The Applicant had taken over management of the tenancy in June 2022. He does not know if rent was paid properly prior to then. Mr Bolling explained that this is the reason that no arrears are claimed before June 2022. He confirmed that the total arrears now amount to £10,300 as per the updated rent statement lodged recently. Evidence has been produced of the rent payments made by the Respondent since then but Mr Bolling stated that no rent whatsoever has been paid since December 2023 so the arrears have risen steadily.

8. Mr Bolling stated that there was no requirement to lodge 'pre-action protocol' communications as the Applicant is not relying on a rent arrears ground for eviction. His understanding is that there has been some contact previously between the Applicant and Respondent regarding the rent arrears but no engagement for some time now. The Respondent is understood to live alone at the Property, with no dependents and to have been working for a housing association previously, although the Applicant is unaware of his current circumstances. Mr Bolling submitted that, in these circumstances, it is reasonable for the Tribunal to grant the eviction order sought.
9. The Tribunal Members conferred and indicated that they would grant the eviction order on the ground sought, would issue decision paperwork to both parties shortly and thanked Mr Bolling for his attendance at 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 or around 12 November 2020, although he was already in occupation of the Property when it was purchased by the Applicant.
3. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession, having already instructed a solicitor/estate agent in the matter.
4. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was served on the Respondent by Sheriff Officer on 27 March 2024.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 20 June 2024.
6. The Tribunal Application was submitted on 22 August 2024.

7. The Respondent remains in occupation of the Property.
8. The rent in respect of the tenancy is £400 per calendar month.
9. There are rent arrears owing by the Respondent amounting to £10,300 and no rent has been paid since December 2023.
10. The Applicant wishes to sell the Property for financial reasons, in connection with his marital separation and due to his personal circumstances.
11. The Respondent did not lodge any written representations nor attend the CMD.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and the oral information provided at the CMD by the Applicant's solicitor.
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 relevant provisions of the 2016 Act.
3. The Tribunal considered that, although it had not had sight of a copy of the full tenancy agreement, there was sufficient information before it to establish that the tenancy had commenced in or around November 2020 and that the rent payable was £400 per calendar month.
4. The Tribunal was satisfied that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from the Applicant's solicitors/estate agents confirming their instructions to act in the marketing of the Property and that the Applicant's solicitor had provided detailed information at the CMD regarding the Applicant's current circumstances, particularly his marital separation, and his reasons for requiring the Property to be sold.
5. The Tribunal also noted the information that had been provided by the Applicant's solicitor at the CMD regarding the Respondent's circumstances and his lack of engagement with the Applicant in respect of the rent arrears and these Tribunal proceedings. It was noted that the rent arrears owing are now significant, amounting to over £10,000 and that payments had been erratic during 2022 and 2023, before rent payments stopped altogether in December 2023. The Tribunal was satisfied that the Respondent was aware of the Tribunal proceedings and had chosen not to make written representations on

his own behalf nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.

6. The Tribunal did not have any material before it to contradict the Applicant's position, nor to indicate that the Respondent was opposed to the eviction. 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.

### **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.**

# N.Weir

**Legal Member/Chair**

**20 May 2025**  
**Date**