



**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/24/5770**

**Re: Property at 23 Burghlee Terrace, Loanhead, EH20 9BP (“the Property”)**

**Parties:**

**Ms Yvonne Smith, Mr Craig Smith, 12 Park Avenue, Loanhead, EH20 9BE (“the Applicants”)**

**Mr John Anthony Cattigan, 23 Burghlee Terrace, Loanhead, EH20 9BP (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (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 the Applicants are entitled to the Order sought for recovery of possession of the property.**

**Background**

1. The Applicants submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondent from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 5 April 2025 informing both parties that a CMD had been assigned for 8 July 2025 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today

on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 26 April 2025.

### **The case management discussion – 8 July 2025**

4. The CMD took place by conference call. The First Applicant joined the call and both Applicants were represented by Mr Calvin Gordon, solicitor. The Respondent did not join the conference call, and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD.
5. The Tribunal asked for submissions in relation to the status of the tenancy agreement. It was noted that the tenancy agreement produced states that the commencement date of the tenancy was 30 March 2018, although it was signed on 1 November 2016. The First Applicant confirmed that the Respondent occupied the Property from 1 November 2016. The landlord named in that tenancy agreement passed away on 14 October 2022. It was submitted that by virtue of schedule 4, paragraph 9(3)(c) of the Housing (Scotland) Act 1988 ("the 1988 Act") the tenancy converted to a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") on 14 October 2024.
6. The Respondent's circumstances are such that he lives alone in the Property and is not in employment. He reported to the Applicants that he contacted the local authority and was advised that they cannot provide alternative accommodation unless and until an eviction order is granted.
7. The Tribunal explained that the members will consider the submissions made in relation to the status of the tenancy as a preliminary matter and thereafter will consider whether the ground for eviction is established and whether it is reasonable for the Tribunal to grant an eviction order. The Tribunal advised that a written decision will be issued to the parties in due course.

### **Findings in Fact**

8. The Respondent and Evelyn Jean Smith entered into a common law tenancy on 1 November 2016. Evelyn Jean Smith was a resident landlord.
9. The Applicants are the executors nominate of Evelyn Jean Smith, who died on 14 October 2022.
10. The Applicants obtained confirmation of the estate of Evelyn Jean Smith on 1 September 2023.

11. From 14 October 2024, the Property was let to the Respondent as a separate dwelling and was the Respondent's principal home. From that date, a private residential tenancy was created.
12. The Applicants' representative served Notice to Leave on the Respondent by sheriff officer on 15 October 2024.
13. The Applicants intend to market the Property for sale within 3 months of the Respondent ceasing to occupy it.

### **Reason for Decision**

14. The Tribunal took into account the application and supporting papers and the submissions made at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules and make relevant findings in fact based on the information provided by the Applicants. The Tribunal did not identify any issues to be resolved in this case that would require a hearing to be fixed.
15. The Tribunal has considered the status of the tenancy agreement between the parties. The information before the Tribunal was that the Respondent started to occupy the Property from 1 November 2016, which was when the tenancy agreement was signed. A copy of that tenancy agreement has been produced by the Applicants. Evelyn Jean Smith was a resident landlord and therefore the tenancy was not an assured tenancy (Schedule 4, paragraph 9 of the 1988 Act). A change to the resident landlord status arose when the landlord died on 14 October 2022. From that date, the Respondent occupied the Property as a separate dwelling and it was his principal home. The parties did not agree the terms of a new tenancy following the death of the resident landlord. By operation of paragraph 9(3)(c) of schedule 4 to the 1988 Act, the common law tenancy continued as it was for a period not more than 24 months. Thereafter, the tenancy no longer met the criteria for schedule 4 of the 1988 Act. From 14 October 2024, the tenancy met the definition for a private residential tenancy in terms of section 1 of the 2016 Act.
16. Having considered the application and supporting papers, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act. The Tribunal therefore went on to consider whether ground 1 had been met in this case.
17. The Applicants are entitled to sell the Property by virtue of the grant of confirmation obtained in respect of the estate of Evelyn Jane Smith. The Applicants have obtained a marketing proposal from Thorntons solicitors and intend to instruct that firm to market the Property for sale. The Tribunal was satisfied that the ground for eviction was established.
18. The Tribunal considered whether it was reasonable to grant the order for eviction. The Applicants' representative explained why the Applicants wish to sell the Property. There is a mortgage in the name of the late Evelyn Jean Smith

and the heritable creditor has advised the Applicants that they are in breach of the mortgage terms and conditions. The Applicants need to sell the Property in order to pay the heritable creditor and then conclude the winding up of the estate. The Respondent did not participate in the CMD. The Respondent told the Applicants that the local authority will not provide alternative accommodation unless and until an eviction order is granted. Taking account of these factors, the Tribunal found that it was reasonable to grant the order for eviction.

### **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 Irvine

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Legal Member/Chair

8 July 2025

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Date