



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/0375**

**Re: Property at 12 Alder Road, Abronhill, Cumbernauld, G67 3AF (“the Property”)**

**Parties:**

**EWP2 Asset Management Ltd, Tax Assist, 113 St Johns Road, Edinburgh, EH12 7SB (“the Applicant”)**

**Miss Lorraine Murray, 12 Alder Road, Abronhill, Cumbernauld, G67 3AF (“the Respondent”)**

**Tribunal Member:**

**Ms H Forbes (Legal Member) and Ms E Shand (Ordinary Member)**

**Decision**

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

**Background**

1. This is a Rule 109 application made in the period between 6<sup>th</sup> and 28<sup>th</sup> February 2023. The Applicant is seeking an eviction order under ground 1. The Applicant lodged copy private residential tenancy agreement between the parties which commenced on 18<sup>th</sup> November 2019, copy Notice to Leave dated 10<sup>th</sup> October 2022, with evidence of service, copy section 11 notice with evidence of service, and evidence of intention to sell.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 20<sup>th</sup> June 2023. The case was continued to a hearing on reasonableness.
3. By email dated 7<sup>th</sup> September 2023, the Applicant lodged written submissions which set out the Applicant’s financial situation, options explored to try and sell the Property, and an indication of other housing options available to the Respondent.

## **The Hearing**

4. A hearing took place by telephone conference on 19<sup>th</sup> September 2023. Both parties were in attendance. The Applicant was represented by Mr Dow, Company Director.
5. The Respondent indicated that she had not received the CMD note issued on or around 20<sup>th</sup> June 2023. The Tribunal Clerk confirmed that the item had been sent by recorded delivery and signed for by the Respondent. The Respondent said it may have been opened by someone else within the household. The Respondent said she had taken advice from the Citizens Advice Bureau and was in a position to proceed with the hearing.

## **The Applicant's position**

6. Mr Dow updated the Tribunal on attempts made to sell the Property with a sitting tenant. Attempts to sell privately, even at a reduced selling price, had not been successful. He has now applied to sell the Property to the local authority on the Open Market Buyback Scheme, and the Property will be valued by the local authority in early October. The likely timeframe is 3 to 5 months for conclusion by the local authority. Mr Dow said this would be the best outcome for both parties. Mr Dow confirmed he was still seeking an eviction order, as the Applicant requires the security of an order, in case the local authority sale does not proceed. If no order was granted, and the Applicant had to start the eviction procedure again, they would be in dire financial circumstances.
7. Mr Dow took the Tribunal through his written submission, which set out the property portfolio of the Applicant and their associated company EWP Asset Management ("EWP"), which was formed to offer short term lettings in Edinburgh. EWP initially owned two properties, one of which has been sold. The second property can no longer be used for short term lets, as it does not meet the local authority regulatory requirements, being a tenement property with a communal stair. Attempts to sell the property have not been successful. It is now let on a private residential tenancy, and is making a loss, as the mortgage payments have increased significantly.
8. The Applicant company was formed as a holding vehicle for long term rental properties and is funded by means of an intercompany loan from EWP and a buy to let mortgage. The Applicant directors have granted personal guarantees in relation to the mortgages of both companies. The current financial situation has meant that both companies are now at risk, as are the Applicant directors' personal finances. The Applicant requires to repay its loan to EWP to pay off the mortgage on the buy to let property to remove exposure to the current high rate, unpredictable environment.
9. The fixed rate mortgage on the Property will come to an end in July 2024. Any remortgage is likely to be expensive and there is no realistic prospect of

increasing the rent. The best fixed rate on offer would double the mortgage payments. This puts the Applicant directors at personal financial risk of having to help pay the mortgage payments. The Applicant wishes to sell the Property to allow them to repay the loan to EWP. The Applicant directors have experienced significant rises in household costs, and expect an imminent significant rise in personal mortgage payments.

10. There was no cross-examination of the Applicant.

### **The Respondent's position**

11. The Respondent said she has attempted to secure alternative private housing, but there are large numbers of people going for every property. She has been informed that her family circumstances, being a single parent with only one wage coming in, will affect the likelihood of being successful in securing private rented housing, as landlords are more likely to choose tenants with two wages.

12. The Respondent has completed a local authority application form. She has been phoning the local authority weekly. They have told her she is unlikely to secure housing unless she is being evicted. Even then, she may be offered a scatter flat as temporary accommodation. She has two children, aged 11 and 13. Her 11-year-old has been diagnosed with autistic traits which means they require to know in advance where the family will be living, and they require a garden in which to play. She has made the local authority aware of this, but they have said she may not get a property with an enclosed garden.

13. The Respondent said the situation is very stressful and has been going on for nearly a year. Not knowing what will happen is concerning. The best outcome would be purchase by the local authority.

14. Responding to questions from the Tribunal regarding social housing, the Respondent said she would be in a position to get professional evidence regarding her son's condition to put to the local authority to assist in securing suitable housing. She has been offered, and has refused, a property by the local authority but it was in the one area she had asked not to be housed, for personal reasons which she explained to the Tribunal. She has indicated that she would accept a property in several other areas. Ideally, she would like to be housed close to the children's school and her work.

15. The Respondent said she was grateful to the Applicant for all the help they were giving her.

16. There was no cross examination of the Respondent.

### **Findings in Fact and Law**

17.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 18<sup>th</sup> November 2019.

- (ii) The Applicant has served a Notice to Leave upon the Respondent.
- (iii) The Applicant is entitled to sell the Property.
- (iv) The Applicant intends to sell the Property for market value or at least put it up for sale within three months of the Respondent ceasing to occupy the Property.
- (v) The Respondent lives in the Property with her two children.
- (vi) The Respondent is on the local authority housing list.
- (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

18. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the landlord intends to sell the let property. The Tribunal may find the ground met if the landlord is entitled to sell the property and intends to do so for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it.
19. The Tribunal accepted that the Applicant intends to sell the Property as required by the legislation. The Tribunal was satisfied that Ground 1 had been established.
20. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act. The requisite section 11 Notice has been served upon the local authority.
21. In considering whether it was reasonable to grant the eviction order, the Tribunal considered all the documentary and oral evidence. The Tribunal considered that both parties have compelling circumstances. The Tribunal accepted that the Applicant has to reduce their portfolio by selling the Property, in order to alleviate their financial difficulties. The Tribunal took into account the extensive written submission made on behalf of the Applicant.
22. In considering the Respondent's circumstances, the Tribunal took into account the difficulties caused by the Respondent's child's circumstances, and their need for certainty and suitable housing. The Tribunal was concerned that there was no documentary evidence lodged to support the child's medical condition or the impact of eviction upon the child, however, the Respondent's evidence in this regard was unchallenged. The Tribunal considered that granting an order was likely to result in a period of stress for the family. The application to the Open Market Buyback Scheme may well result in a positive outcome for both parties, and the delay in execution of an eviction order as a

result of the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 will allow the application to progress.

23. The Tribunal considered the situation if the application to the Open Market Buyback Scheme is not successful. By law, local authorities must offer a minimum of advice, assistance, and temporary accommodation to all homeless households and those at risk of homelessness. If an order is granted, it is likely that the family will be housed appropriately. The Tribunal took into account that the family is receiving ongoing educational and medical support which will, hopefully, assist the Respondent in securing suitable social housing, should that be necessary.

24. In weighing and balancing all the information before it, and the circumstances of both parties, the Tribunal considered that a refusal to grant the order, in the current financial climate, would result in dire financial circumstances for the Applicant which would be likely to impact upon the Applicant, their associated company, and the directors' personal finance. In all the circumstance, the Tribunal decided it was reasonable to grant the order.

### **Decision**

25. An eviction order in respect of the Property is granted. The order is not to be executed prior to the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

### **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.**

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**Helen Forbes  
Legal Member/Chair**

**19<sup>th</sup> September 2023  
Date**

