

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/EV/22/2592**

**Re: Property at 4 Beech Grove, Arbroath, DD11 2EU (“the Property”)**

**Parties:**

**Mr John Hines and Ms Paula Lundie, both residing at 83 Stoneycroft Lane, Arbroath, DD11 1PX (“the Applicants”) per their agents, Angus Glen Properties Ltd 18 South Tay Street Dundee DD1 1PD (“the Applicants’ Agents”)**

**Ms Rebecca Holly Hewitt, residing at 4 Beech Grove, Arbroath, DD1 2EU (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order with effect from 10 January 2023.**

1. By application received on 27 July 2022 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on Ground 1, the landlord intends to sell the let property of Schedule 3 to the Act. The Application comprised copy Notice to Leave dated 6 January 2022, copy private residential tenancy agreement between the Parties with an entry date of 21 February 2019, copy instruction market the Property for sale and email confirming the date for a valuation of the Property and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Angus Council, being the relevant local authority. The Application was accepted by the tribunal and a Case Management Discussion (the “CMD”) was fixed for 8 November 2022 at 10.00 by telephone conference. The CMD was intimated to

the Parties and, in particular, was served on the Respondent by sheriff officer on 4 October 2022.

### **CMD**

2. The CMD took place on 8 November 2022 at 10.00 by telephone. Ms. Lynn McIntosh of the Applicants' Agents took part on their behalf. The Respondent took part.
3. The Tribunal explained that the purpose of the CMD was to identify the facts of the matter, to establish if the ground for the Application is satisfied and to determine if it is reasonable for the Tribunal can grant the Order. The Tribunal noted from the Application that the correct statutory procedures had been carried out but asked Ms. McIntosh to explain why the Notice to Leave had been sent to an email address which differed from those on the tenancy agreement and the Application form. Ms. McIntosh explained that Ms. Hewitt had had numerous email addresses. Ms. Hewitt confirmed that is was the case and confirmed that she had received the Notice to Leave on 6 January 2022.
4. With regard to the Applicants' intention to sell, Ms. McIntosh advised the Tribunal that the Applicants had taken the decision to sell the property due to their own financial circumstances. She explained that they were struggling financially and that the mortgage and common charges costs for the Property had risen to £567.00 per calendar month whereas the monthly rent is £450.00 and so there is a significant shortfall each month. She stated that the Applicants had not taken the decision lightly and had given the Respondent as much notice as possible to find alternative accommodation. Ms. McIntosh explained that she and the Applicants' Agents had been assisting the Respondent to find alternative accommodation without success. The Respondent confirmed this to be the case and confirmed that she did not oppose the Application but required alternative accommodation. She stated that the Property is no longer adequate for her needs and that she would require a larger Property.
5. With regard to the Parties' personal circumstances, Ms. McIntosh explained that the Applicants are the parents of two small children and that they do not have a portfolio of rental properties. The financial burden of the Property is proving excessive for them. Ms. Hewitt explained that she has three small children, including a 10 month baby and a child with autism. She explained that she has applied for local authority housing and is on a waiting list.

### **Issue for the Tribunal**

6. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion .....including making a decision*” . The Tribunal took the view that it had sufficient information to make a decision on both the statutory ground and reasonableness and so proceeded to determine the Application.

### **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a tenancy of the Property between the Parties;
  - ii) The Applicants are struggling financially to sustain the cost of the Property and require to sell for those financial reasons;
  - iii) The Applicants have dependant children;
  - iv) The Applicants intend to sell the Property when they have vacant possession;
  - v) The Applicants have carried out the statutory processes required by the Act;
  - vi) The Respondent has dependant children;
  - vii) The Respondent has made attempts to secure alternative accommodation without success;
  - viii) The Property is no longer entirely suitable for the Respondent’s needs;
  - ix) The Respondent is in contact with the local authority to secure alternative accommodation.

### **Decision and Reasons for Decision**

8. The Tribunal had regard to all the information before it and to its Findings in Fact and found that the statutory ground is established.
9. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the fact that the Applicants’ financial circumstances and took the view that it is untenable for them to continue to finance the cost of the Property. The Tribunal noted that the Respondent does not object to or oppose the Application. The Tribunal noted that the Respondent’s personal circumstances are such that she is protected by the homeless in Scotland bank of legislation. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. However, in the circumstances the Tribunal considered it appropriate to allow the Respondent sufficient time to secure local authority or social rented accommodation and so determined that the date on which the Order should come into effect is 10 January 2023.

## 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.

Karen Moore

08/11/2022

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**Legal Member/Chair**

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**Date**