



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

**Chamber Ref: FTS/HPC/EV/23/1880**

**Re: Property at 42a Mainhead Terrace, Cumbernauld, Glasgow, G67 2SP (“the Property”)**

**Parties:**

**Ms Tracey McNulty, 8 Chamomile Close, Liverpool, L11 2YX (“the Applicant”)**

**Ms Dani Bird, 42a Mainhead Terrace, Cumbernauld, Glasgow, G67 2SP (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs H Barclay (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.**

**Background**

1. This is a Rule 109 application made in the period between 7<sup>th</sup> June and 7<sup>th</sup> July 2023. The Applicant indicated in the application form that they were seeking an eviction order under grounds 1 and 11. The Applicant lodged a copy of a private residential tenancy agreement between the parties that commenced on 29<sup>th</sup> May 2022, copy Notice to Leave citing grounds 1A and 11 dated 7<sup>th</sup> February 2022, alleged proof of hand delivery on 6<sup>th</sup> February 2023, copy section 11 notice with evidence of service, rent statement, bank account screenshots, HMRC PAYE information, evidence of intention to sell, and copy correspondence to the Respondent. By email dated 7<sup>th</sup> July 2023, the Applicant removed ground 11 from the application.
2. The application and notification of a forthcoming Case Management Discussion was served upon the Respondent by Sheriff Officer on 14<sup>th</sup> September 2023.

3. By email dated 14<sup>th</sup> October 2023, the Applicant lodged further productions including a rent statement showing a balance of £1605 outstanding in rent arrears as at September 2023.

### **The Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference on 24<sup>th</sup> October 2023. The Applicant was in attendance. The Respondent was not in attendance. The Applicant said she had received a message from the Respondent the previous evening stating that she did not intend to attend the CMD and was not opposing the order.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. The Applicant clarified that she was seeking an eviction order on ground 1A. Responding to questions from the Tribunal, the Applicant said the Notice to Leave was served upon the Respondent personally by the Applicant’s daughter on 6<sup>th</sup> February 2023, as the Applicant no longer lives locally. As part of the application process, the Applicant had been prompted to provide evidence of service and she lodged the letter dated 30<sup>th</sup> June 2023 which was signed by her daughter to confirm service.
7. The Applicant explained her financial circumstances, stating that she was made redundant last year and is now earning significantly less. Despite the loss of income, her outgoings have not changed, and she is struggling financially. The Respondent is in receipt of Universal Credit, which partially covers the rent, but she has not been paying the remainder. This means that the rent does not cover monthly mortgage payments, and the Applicant has to rely on her partner to assist with paying insurance on the Property. A family member has been unwell and unable to work and the Applicant has had to assist the family member. The Applicant said she does not have the funds to do this. Her intention is to sell the Property in order to raise funds to assist herself and her family member to get back on their feet.
8. The Applicant said she had contacted the local authority in the hope that they would purchase the Property on their buy back scheme, but they had refused. She had done this in the hope that the Respondent could stay in the Property, as she did not want to make her homeless.
9. Responding to questions from the Tribunal on the Respondent’s circumstances, the Applicant said the Respondent lives alone. The Applicant is not aware of any dependants of the Respondent, or any medical or social circumstances that affect the Respondent. The Applicant said she thinks the Respondent is not in work at present. The Applicant said the Respondent had told her she has sought social housing, but has been told she will not get housing unless she has an eviction order. Responding to questions from the Tribunal as to the Respondent’s conduct as a tenant, the Applicant said there

had been issues with neighbour complaints in the past, and a verbal warning had been given, which had solved the problem. The Applicant said she had hoped to inspect the Property when she was back in the area, but requests to the Respondent for access had not been answered.

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

10.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 29<sup>th</sup> May 2022 at a monthly rent of £400.
- (ii) The Applicant has served a Notice to Leave upon the Respondent.
- (iii) The Applicant is entitled to sell the Property.
- (iv) The Applicant is suffering financial hardship.
- (v) The Applicant intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy the Property.
- (vi) The Respondent has failed to pay rent lawfully due.
- (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

- 11. 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.
- 12. Ground 1A of Schedule 3 of the Act provides that it is an eviction ground that the Landlord intends to sell the let property to alleviate financial hardship. The Tribunal may find the ground met if the landlord is entitled to sell the Property, is suffering financial hardship, and intends to alleviate the hardship by selling for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it. The Tribunal is satisfied that ground 1A is met.
- 13. The Tribunal took into account the circumstances of both parties. The Tribunal considered the Applicant to be in financial hardship, as supported by information from HMRC, which showed a decrease in income. The Tribunal considered that selling the Property would assist the Applicant in alleviating the financial hardship. The Respondent's failure to pay the rent in full is exacerbating the financial hardship.
- 14. The Tribunal noted that the Respondent had implied her wish for an eviction order in a message to the Applicant in February 2023. Although the

Respondent did not see fit to contact the Tribunal to inform them of her position, this evidence tended to support the Applicant's evidence that the Respondent had informed her that she was not opposing the order and wished to be allocated a council house. In the absence of the Respondent, the Tribunal had limited information on her circumstances.

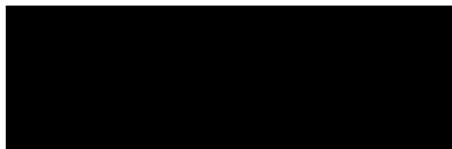
15. In all the circumstances, the Tribunal decided it was reasonable to grant the order.

### **Decision**

16. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 27<sup>th</sup> November 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.**



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**Legal Member/Chair**

**24<sup>th</sup> October 2023**  
**Date**