



**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/23/4097**

**Re: Property at 0/2 97 Bruce Road, Paisley, PA3 4SQ (“the Property”)**

**Parties:**

**Mr Alexander Crowe, 24 Priors Walk, Coldingham, Eyemouth, TD14 5PE (“the Applicant”)**

**Mr Brian Smith, 0/2 97 Bruce Road, Paisley, PA3 4SQ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (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 16 November 2023, 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 tenancy agreement, 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/proof of service of same and evidence in support of the ground, namely an email from Allen & Harris, Estate Agents, confirming that they would be acting for the Applicant in the sale.

2. Following initial procedure, on 17 January 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 24 April 2024 was served on the Respondent by way of Sheriff Officer on 19 March 2024. In terms of said notification, the Respondent was given until 8 April 2024 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

### **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 24 April 2024 at 10am, attended only by the Applicant’s representative, Miss Elizabeth Kilpatrick, Administrator, of R & J Properties, Letting Agents. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but he did not do so.
5. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained and there was discussion regarding the eviction application. Miss Kilpatrick confirmed that the Applicant is seeking an eviction order on the basis that he intends to sell the Property. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. Miss Kilpatrick explained that the reason the Applicant wishes to sell is really down to his age. He is a pensioner and he originally purchased the Property with the intention of selling it when he retired to provide him with a pension pot. This is the Applicant’s only rental property. The Applicant also had a hip replacement operation recently which he had to pay for privately, due to lengthy NHS waiting lists and he really needs the equity from selling the Property as soon as possible. It is therefore the intention that the Property will be marketed as soon as vacant possession is obtained and certainly within the 3 month period mentioned in the legislation. Miss Kilpatrick confirmed that Allen & Harris are already instructed and have, in fact, already tried to get access to the Property in order to value it. However, the Respondent has not facilitated this.
7. Miss Kilpatrick stated that, in the run up to the Notice to Leave being served, they did communicate with the Respondent and informed him of the reasons for the Applicant wishing to sell. The Respondent seemed fine about this and indicated that he would speak to the local authority about alternative accommodation. However, the Applicant’s letting agents have not heard anything from him since the Notice to Leave was served and, around that time, the Respondent stopped paying rent. Miss Kilpatrick confirmed that there were

some issues a few years ago with the Respondent paying his rent, due to him being in and out of work. However, this was resolved at that time when the Respondent sorted himself out with Universal Credit and also made extra payments towards his rent arrears. When the Notice to Leave was served, there were no issues with the Respondent or rent payments but he has since stopped his Universal Credit being paid towards his rent. This has led to the rent account now being in arrears of around £3,500. The letting agents have also tried communicating with the Respondent regarding the rent arrears but, again, he has not responded. Miss Kilpatrick confirmed that the Respondent lives in the Property alone. She requested that the eviction order be granted today.

8. The Tribunal considered the application and confirmed that the Tribunal would grant the eviction order sought and the process which would now follow. Miss Kilpatrick was thanked for her attendance.

### **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 18 July 2018.
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.
4. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was sent by post to the Respondent on 10 August 2023 and the 'track and trace' delivery receipt from Royal Mail indicates that it was signed for by the Respondent personally on 11 August 2023.
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 5 November 2023.
6. The Tribunal Application was submitted on 16 November 2023.
7. The Respondent remains in possession.
8. The Respondent stopped paying rent in or around the time notice was given and there are now substantial rent arrears.
9. The Respondent did not lodge any written representations and nor did he 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 representative.
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 tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered 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 an estate agent and that the Applicant's intention to sell is due to his age and financial circumstances on retirement. The Tribunal was satisfied from the information provided by the Applicant's representative that the Applicant has a genuine intention to sell as soon as possible, for the reasons stated and that the estate agents instructed would already be underway with the valuation and the marketing of the Property if they had been able to access the Property. The Tribunal noted that the Respondent had not facilitated access and had also stopped paying his rent some months ago, which the Tribunal considered also had a bearing on reasonableness. The Applicant's representative had addressed the Tribunal as to the background circumstances of the Respondent, as far as known to them and it was noted that he lives alone, appeared to be in receipt of Universal Credit and had stated to the letting agent that he intended to contact the local authority about alternative housing. The Respondent was aware of the Tribunal proceedings and had chosen not to make written representations nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.
4. The Tribunal did not have any material before it to contradict the Applicant's position, nor indicate that the Respondent was opposing 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

24 April 2024  
Date