



**Decision 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 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/2600**

**Re: Property at 30 Orchard Court, Dundee, DD4 9DB (“the Property”)**

**Parties:**

**Mr Russell Bowen, Mrs Natalie Bowen, 3 Ballumbie Gradens, Dundee, DD4 0NR; 3 Ballumbie Gardens, Dundee, DD4 0NR (“the Applicant”)**

**Mr Craig Adam, Ms Antonia Christina Reilly, 30 Orchard Court, Dundee, DD4 9DB (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Elizabeth Currie (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 2 August 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 a copy of an email from the Applicant to the Applicant’s letting agent dated 26 April 2023 stating an intention to sell the Property and instructing the letting agent to serve notice.

2. On 21 August 2023, 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 7 November 2023 was served on both Respondents by way of Sheriff Officer on 3 October 2023 (First Respondent) and 18 October 2023 (Second Respondent). Written representations on behalf of the Respondents were lodged by email from their solicitor from Dundee Law Centre on 2 November 2023.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 7 November 2023 at 10am, attended by Mr Greg Gardner of Easylets Ltd on behalf of the Applicant and by Ms Vicky McLanders, Solicitor of Dundee Law Centre on behalf of the Respondent.
5. After introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the Respondent’s position in relation to that. Mr Gardner acknowledged that he had had sight of the written representations lodged on behalf of the Respondent. Ms McLanders confirmed the terms of those representations, namely that the couple have 4 young children, are settled in the area with their children attending a local primary school, that they understand the Landlord’s position that he wishes to sell but feel that they cannot consent to an eviction order being granted due to the complexities of homelessness and intentionality. The Respondents have been tenants since March 2020 and will be homeless if the order sought is granted. Ms McLanders had also raised in her representations the fact that the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the COLA”) applies to this case, with the consequence that, if an order is granted, its enforcement would be subject to delay.
6. Mr Gardner was asked to address the application, both in terms of the ground for eviction sought and the requirement for the Tribunal to be satisfied on reasonableness. He confirmed that the Applicant is wishing to sell both this and their own property as the Applicant is re-locating from Dundee to move abroad. Mr Gardner was asked if he has anything in writing to confirm that the Applicant is intending to sell, such as from an estate agent or solicitor instructed or to be instructed in the sale or marketing of the Property as it is a requirement of the legislation that the Tribunal are satisfied on this point. Reference was made to the email from the Applicant lodged with this application and attached to the Notice to Leave which states the Applicant’s intention. Mr Gardner advised that he does not have anything in writing to hand that he could submit just now but explained the circumstances. He stated that it is the intention to instruct Remax estate agents and indeed, has had discussions with Remax regarding this. However, Remax have been unable to access the Property as yet and consider that vacant possession is therefore required first. By way of background, Mr Gardner indicated that the Respondent stopped paying rent when notice was

served and he understands that the Respondent would not cooperate regarding allowing access for Remax. In response, Ms McLanders said that this was not quite accurate. She stated that the Respondent stopped paying rent before notice was served, due to repair issues but that they had set the rent aside pending the repairs being done and that they have now been done. She is not aware of there being a refusal to allow access to Remax. She explained that the Respondent had a baby just a month ago, that they understand the Applicant's position regarding wishing to sell and is sure that access will be permitted to Remax when that is required.

7. As to reasonableness, Mr Gardner stated that the Applicant is sympathetic to the Respondent's position but is looking to sell, which they are entitled to do, due to their own circumstances and wish to sell up and move abroad. He mentioned the timescale already involved in seeking to obtain an order, in terms of the Notice to Leave being instructed in April 2023, served in May 2023 and having the lengthy notice period before the Tribunal application could be lodged. He is also aware that there will be a lengthy delay before any order granted can be enforced in terms of the COLA moratorium which would hopefully allow the Respondent to secure local authority housing. In response to questions from the Tribunal Members, Mr Gardner confirmed that the Applicant is retired and hence the reason for re-locating abroad. The Applicant has four rental properties in total. The reason only this one requires to be sold at the present time (in addition to the Applicant's own home) is due to the mortgage situation with this Property and negative equity.
8. Ms McLanders then addressed reasonableness from the perspective of the Respondent. She confirmed that both are working but have had a baby just a month ago, resulting in a reduction in income. The Respondent has been in contact with Dundee City Council and made an application for housing. Their homeless points in respect of the application have increased with these Tribunal proceedings coming up but it is a three or four bedroom property that is required for the family. It was noted by the Tribunal that the Property is a three bedroom house and that the monthly rental is £650 per calendar month. Ms McLanders confirmed that the Respondent should be eligible for temporary accommodation and that, although the local authority will be aware of the COLA delay in the enforcement of the order, she is aware of the local authority making offers of accommodation in other cases during the 6 month period, if suitable properties become available. Ms McLanders was asked if the Respondent has looked into private lets and she confirmed that they are looking at all their housing options and that, although there are private lets available, the problem is that rents are currently very high. As the Respondent is in receipt of Universal Credit, it is unlikely that the housing element of that would cover a private let rent currently for the size of property required.
9. Mr Gardner concluded by responding to Ms McLanders comments. He asked the Tribunal to consider the fact that the rent of £650 had not been increased since the start of the tenancy, the lengthy timecales involved both before and after an order is granted and also that, if an order is granted, that is likely to increase the Respondent's housing application points and thereby them being offered alternative social housing.

10. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised that the Tribunal was satisfied that it was appropriate in the circumstances for it to grant the eviction order on Ground 1 today, as sought by the Applicant. Mr Gardner and Ms McLanders were thanked for their participation in the CMD.

## **Findings in Fact**

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 20 March 2023.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property when he obtains vacant possession.
5. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was served on the Respondent by email on 3 May 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 29 July 2023.
7. The Tribunal Application was submitted on 2 August 2023.
8. The Respondent did not consent to the eviction order being granted. Nor did the Respondent oppose the application in terms of any of the technical aspects of the application, nor in respect of the requirements of Ground 1 having been met, other than reasonableness.

## **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of both parties.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice 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 the circumstances of both parties, to grant the eviction order sought. Ground 1 is as follows:-

***“Landlord intends to sell***

*1(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*

*(a) is entitled to sell the let property,*

*(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

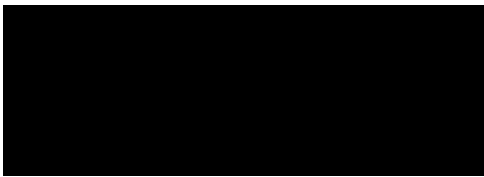
*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

The Tribunal was satisfied that the Applicant is entitled to sell the Property, noting that the Applicant is the registered owner of the Property in terms of Land Certificate ANG59128. The Tribunal was also satisfied from the supporting documentation lodged and the oral submissions on behalf of the Applicant by his representative at the CMD that the Applicant intends to sell or market the Property as soon as vacant possession can be achieved and that there had already been discussions with the intended estate agent regarding the Property being put on the market. The Respondent's representative had confirmed that the Respondent understood the Applicant's reason for seeking the eviction order and did not take issue with the eviction ground being relied upon. The reason for the Applicant's wish to sell had also been explained in detail to the Tribunal's satisfaction at the CMD. As to reasonableness, the Tribunal weighed up the factors put forward in support of both parties by their respective representatives and, on balance, considered that it was reasonable to grant the eviction order. The Tribunal had some sympathy for the Respondent's position, given their current family, personal and financial circumstances and, in particular, that they were settled at the Property and had links to the local area, having resided there since March 2020. However, the Tribunal was also aware that the Respondent had the benefit of legal advice and that they were already in communication with the local authority with a view to obtaining local authority accommodation and that their need for alternative accommodation was likely to be prioritised once an eviction order is granted and the likely timescale for the order being implemented is known. The Tribunal was aware that, given the COLA protections, there would still be a fairly lengthy period before the order was enforceable and that this would hopefully give the Respondent time to secure alternative accommodation. Overall, the Tribunal considered that the factors in favour of granting the eviction order sought by the Applicant outweighed the consequences for the Respondent.

4. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD as there was no requirement for an Evidential Hearing in respect of this application.

### **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.**



**Legal Member/Chair**

**7 November 2023**  
**Date**