



**The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/23/2453**

**Re: Property at 10 Inchgarvie Park, South Queensferry, Edinburgh, EH30 9RN (“the Property”)**

**Parties:**

**Mr Eoin Hennessy and Mr Aiden Mchardie, 48 Angola Road, Worthing, BN14 8DU (“the Applicant”) per their agents DJ Alexander, 1, Wemyss Place, Edinburgh, EH3 6DH (“the Applicants’ Agents”)**

**Rebekka Black and Aaron Smith 10 Inchgarvie Park, South Queensferry, Edinburgh, EH30 9RN (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory grounds being established and the statutory procedures having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

**Background**

1. By application received between 21 July 2023 and 4 September 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 1 and 1A of Schedule 3 to the 2016 Act. They later withdrew the reference to Ground 1A and so the Application continued in respect of Ground 1 only.
2. The Application comprised the following:
  - i) copy private residential tenancy agreement between the Parties;

- ii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to the City of Edinburgh Council being the relevant local authority and
  - iv) copy instructions to selling agents
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 8 December 2023 at 14.00 by telephone conference. The CMD was intimated to the Parties and, in particular, to the Respondents by Sheriff Officer service on 1 November 2023.

## **CMD**

4. The CMD took place on 8 December 2023 at 14.00 by telephone. The Applicants were represented by Mr. M. Urquhart of the Applicants' Agents. The Second-named Respondent, Mr. A. Smith, was present and was unrepresented. The First-named Respondent was not present or represented, Mr. Smith having explained that she had vacated the Property already.
5. On behalf of the Applicants, Mr. Urquhart confirmed that the Order is sought and confirmed that the reasons are as set out in the Application, that the Applicants intend to sell the Property for financial reasons. Mr. Urquhart confirmed that the Respondents have been an exemplary tenants and that the rent has always been paid.
6. Mr. Smith advised the Tribunal that he understood the Applicants' position but had been unsuccessful in obtaining alternative accommodation. He explained that he had made numerous attempts to find private rented accommodation and has recently applied to the City of Edinburgh Council. Mr. Smith advised that he is a single person with no dependants and is in full time employment as a carer.

## **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a private residential tenancy of the Property between the Parties which began on 26 March 2021;
  - ii) The Applicants intend to sell the Property due to their financial circumstances;
  - iii) The Applicants intend to sell the Property as soon as they have vacant possession;
  - iv) The correct statutory procedures have been carried out;
  - v) The First-named Respondent no longer resides at the Property;
  - vi) The Second-named Respondent a single person with no dependants and is in full time employment and
  - vii) The Second-named Respondent has not been able to source alternative accommodation.

## **Issue for the Tribunal**

8. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *“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.”*
9. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

## **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
12. The Tribunal had regard to the facts that the Applicants intend to sell the Property due to their personal financial circumstances. The Tribunal noted that the Parties entered into the tenancy agreement prior to the reasonableness test coming into force and at a time when the Ground was a mandatory ground and not a discretionary one. The Tribunal had regard to the Second-named Respondent’s circumstances and took the view that the homelessness legislation provides a safety net for him. Further, the effect of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is such that any Order cannot be enforced until 31 March 2024 and so the Second-named Respondent has a significant period of time to secure housing. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
13. The Tribunal advised the Second-named Respondent that he should take immediate steps to apply to the City of Edinburgh Council as homeless that he should stress that he is not intentionally homeless and that the Order has been granted through no fault of his making as he has not breached the tenancy agreement.
14. This decision is unanimous.

## **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

8 December 2023  
Date