



**Amended 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**

**Chamber Ref: FTS/HPC/EV/20/0272**

**Re: Property at 49 Blair Avenue, Hurlford, Kilmarnock, KA1 5AZ (“the Property”)**

**Parties:**

**Bank of Scotland plc (Heritable Creditor), The Mound, Edinburgh, EH1 1YZ (“the Applicant”)**

**Ms Diane Dunbar and all other occupiers, 49 Blair Avenue, Hurlford, Kilmarnock, KA1 5AZ (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the respondent**

**Introduction and Background**

This is an application in terms of Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

The applicant is the Bank of Scotland and is the heritable creditor / lender. The respondent is the tenant who is Ms Diane Dunbar.

The application was received by the Tribunal on 24 January 2020. There has been considerable delay in the determination of the application due to the Covid-19 pandemic.

The initial CMD took place on 15 July 2020. The applicant was not represented. The respondent participated personally. She acknowledged the need to find another home. The application was continued to a fresh CMD.

The next CMD took place on 2 November 2020. The applicant was represented. No eviction order was moved for. The Financial Conduct Authority guidelines apply to the applicant Bank with reference to protection to consumers during the Covid-19 pandemic. The respondent indicated a wish to seek further advice. The case was again continued to a fresh CMD.

The fresh CMD took place by teleconference on 10 February 2021 at 10am. The applicant was represented by Mrs Z Bashir of Ascent Legal Scotland. The respondent joined the hearing personally and was supported by her sister Ms C Dunbar for support.

### Findings and Reasons

The property is 49 Blair Avenue, Hurlford, Kilmarnock, KA1 5AZ

The applicant in this action is the Bank of Scotland who is the mortgage lender in respect of the property. The landlord, Mr Robbie Hislop, was the heritable proprietor of the property. He was sequestrated. The property was repossessed by the applicant Bank in terms of a Decree granted on 3 July 2019 at Kilmarnock Sheriff Court, which is evidenced.

A private residential tenancy was entered into on 29 June 2018 between Mr Hislop and the respondent. The monthly rent is £500 per month.

The respondent is maintaining her rental payments. She is not in breach of the tenancy agreement. She pays her rent to a letting agent who remits the rent to the trustee in sequestration, not the applicant lender. She resides in the property with her two young children who are aged 7 and 2 years.

Notice to Leave was served on the respondent on the basis of an intention on the part of the applicant to sell the property. This is Ground 2 of Part 1 Schedule 3 to the Act. The Notice to Leave was served long before coronavirus considerations were relevant. The ground for eviction is evidenced in documentary form and is not the subject of challenge. The Tribunal finds that the applicant Bank intends to sell the property. The eviction ground relied upon is a mandatory ground for eviction.

Notice to Leave was served upon the respondent, dated 11 October 2019. The Notice to Leave was served before 7 April 2020 which is when the Coronavirus (Scotland) Act 2020 came into force which extends the notice periods which landlords require to provide tenants, and which made all grounds for eviction discretionary. The required notice period under Ground 2 was then 84 days. The Notice to Leave was valid under the 2016 Act.

The Notice to Leave which is dated 11 October 2019 specifies that an application would not be submitted to the Tribunal for an eviction order before 6 January 2020.

Under Section 62(5) of the 2016 Act, it is assumed that a tenant receives a Notice to Leave 48 hours after it is sent. In this instance the assumption is that the Notice was received by the respondent on 13 October 2019. (In fact there is evidence in terms of a post office track and trace certificate that the respondent received the document one day early on 12 October 2020).

The 84 day period runs from 13 October 2019. This means that the 84 day notice period expired on 5 January 2020.

The application of Section 62(4) of the Act means that the day to be specified in the Notice, as being the day on which the applicant could become entitled to make an application for an eviction order to the First-tier Tribunal, is the date after the day on which the notice period expires ie the day after 5 January – 6 January 2020. This is the date specified in the Notice to Leave served upon the respondent as evidenced and therefore the Notice to Leave is valid.

The pre-action requirements which are under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020 do not apply to this application. Such requirements only apply to applications made to the Tribunal on or after 6 October 2020.

The property is situated within a designated level area for the purposes of Covid-19 restrictions imposed by the Scottish Government. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 apply. The regulations currently prevent, except in specified circumstances, attendance at a dwelling house for the purpose of serving a charge for removing or executing a Decree for removing from heritable property (giving notice of or carrying out an Eviction Order in relation to a residential tenancy of a dwelling house). The specified circumstances, amounting to an exception are where possession of the dwelling house is sought on the basis of nuisance, annoyance or conviction for using or allowing the dwelling house to be used for immoral or illegal purposes, antisocial behaviour, certain convictions or association with a person who has relevant convictions or a person who has engaged in relevant antisocial behaviour. None of the specified circumstances apply here. As things stand, any Eviction Order cannot be implemented in respect of the property until at least 1 April 2021.

In recognition of the ban on implementing evictions currently, the applicant's representative advised that whilst she was seeking an Eviction Order she was specifically asking that the date contained in the Order for lawful removal was dated in the future, not before 1 April 2021. She was content that the date specified should

be as long as 6 full months from the date of the hearing – 10 August 2021 – to enable the respondent sufficient time to secure another home.

The respondent wishes to move home. She has been seeking alternate accommodation. She agreed to decree of eviction being granted with the date specified in the order for removal being forward dated by a full 6 months. Once the Order is granted this will enhance her prospects of being allocated another home as she will be designated as homeless.

In the circumstances, with the consent of the respondent, the Tribunal made the Eviction Order, specifying that lawful removal cannot take place until after 12 noon on 10 August 2021.

The applicant's representative indicated that no enforcement of the eviction will be undertaken after 10 August 2021 without prior consultation with the respondent.

### **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**

\_\_\_\_\_  
**Date**