



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

**Chamber Ref: FTS/HPC/EV/23/0388**

**Re: Property at 34 Durward Rise, Dedrige, Livingston, EH54 6HU ("the Property")**

**Parties:**

**Mrs Susan Gordon, 78 Thirlfield Wynd, Livingston, EH54 7ES ("the Applicant")**

**Miss Kirstyn Ledwidge, 34 Durward Rise, Dedrige, Livingston, EH54 6HU ("the Respondent")**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order be made in terms of paragraph 1 of schedule 3 of the 2016 Act**

**1. Background**

1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis that she intends to sell the property. The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave given to the Respondent, a text message acknowledging receipt and correspondence with an estate agent.

1.2 The Respondent had not lodged any written representations in advance of the Case Management Discussion.

**2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 25 May 2023 by teleconference. Both parties appeared personally. The Applicant confirmed that the application was

insisted upon. The Respondent advised that she was opposing the application for the time being. The Tribunal identified that the only issue was that of reasonableness.

2.2 The Applicant confirmed that this was the sole property for the purpose of letting, however, she owned her own home. She had purchased the property in 2007. The Respondent had moved into the property in 2012, however, a new contractual agreement had commenced in 2018 to reflect the change to a private residential tenancy. The Applicant had taken the decision to sell the property last year. It was taken for financial reasons in that she wished to use any proceeds towards paying off the mortgage on her home. She had spoken with an estate agent about the sale and/or potential remortgaging. There was no complaint about the conduct of the Respondent as a tenant.

2.3 The Respondent confirmed that she resided at the property with her son and daughter, aged 4 and 13. She was the full time carer for her son, who had autism. Her daughter also had autism and the Respondent herself had health issues. The Respondent received welfare and disability benefits and relied on these to meet her housing costs. She had sought assistance from the local authority upon receiving the notice to leave. A referral had been made to a local housing association, Places for People, who had offered a property to the Respondent. The said required works to be carried out and would likely not be available before September. The offered property was suitable, located only two streets away from her current property and she required accommodation in the same area for schooling, support and her doctor. Given her financial resources, she could not afford another private let.

2.4 Following a short adjournment to consider the matter, the Tribunal indicated they were prepared to find it reasonable to grant the eviction order, with a delay in enforcement to 31 October 2023.

### **3. Reasons For Decision**

3.1 The Applicant had served the requisite notice to leave upon the Respondent. She had provided information regarding her intention to sell the property. Accordingly, the Tribunal required to consider whether it was reasonable to grant an order for recovery of possession.

3.2 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant had articulated a reason behind the decision to sell and the Respondent did have a firm offer of suitable accommodation, albeit this was not yet available. The Tribunal therefore considered that it was reasonable to grant the order. The Tribunal noted that the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") applied to the present application. Although this resulted in any order being subject to a prohibition on enforcement until, as of the date of the decision, the 30 September 2023, the Tribunal placed considerable weight on the personal circumstances of the Respondent's family. To minimise the potential of the need for them to move to temporary accommodation in the event of a delay in the works to the housing association property being completed, in light of the Respondent's children's health

conditions, the Tribunal considered it appropriate to specify that enforcement of the order could not take place before 31 October 2023.

3.3 The Tribunal was mindful of the potential for the 2022 Act to be extended. In the event that happens, the 31 October 2023 would be superseded and the order would be subject to a 6 month prohibition on enforcement from the date of it being granted, being 25 May 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.**

**Alastair Houston**

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**Legal Member/Chair**

**25 May 2023**  
**Date**