



**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**

Chamber Ref: FTS/HPC/EV/23/3819

**Re: Property at 34 Victoria Street, Kirkpatrick Durham, Castle Douglas, DG7 3HQ
("the Property")**

Parties:

**Ms Kim Kirk, Mr John Walsh, Whitecairn Farm, Kirkpatrick Durham, Castle
Douglas, DG7 3EY ("the Applicant")**

**Ms Elizabeth Boyd, 34 Victoria Street, Kirkpatrick Durham, Castle Douglas,
DG7 3HQ ("the Respondent")**

Tribunal Members:

Mark Thorley (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order of eviction be granted but that enforcement
be delayed for a period of three months.**

Background

1. The applicant John Walsh is the owner of the property at 34 Victoria Street, Kirkpatrick Durham, Castle Douglas DG7 3HQ. The second applicant Kim Kirk is his wife. The parties are separated. The applicant John Walsh lives at Whitecairn Farm, Kirkpatrick Durham, Castle Douglas, DG7 3EY. The second applicant Ms Kim Kirk resides with her mother.

2. An application was made to the Tribunal dated 30 October 2023. Accompanying the application was a medical letter, Notice to Leave, confirmation of Notice to Leave being served, Section 11 Notice, email giving Section 11 Notice and a mandate from the applicants in favour of their daughter.

3. Notice to Leave was served upon the respondent on 13 March 2023. At that time it was indicated that the applicant John Walsh wished to move into the property. Accordingly this was dealt with by way of Ground 5. However due to the ill health of the applicant Kim Kirk could no longer live in the property at Whitecairn Farm and as a result required to move into the rented property.
4. The landlord was described as being the applicant Kim Kirk.
5. The application was received by the Tribunal and further information was sought on 16 November 2023.
6. The application was intimated to be considered on 20 November 2023.
7. Thereafter on 19 January 2024 the application was accepted for determination.
8. The application was served upon the respondent. The respondent emailed to the Tribunal on 27 March 2024 confirming that she would speak for herself. She also indicated that she had been trying to find alternate accommodation but has disabilities and had been trying for over two years.

Case Management Discussion

1. At the case management hearing the applicants attended together also with their representative, their daughter. The respondent also attended.
2. The respondent set out that she had been trying now for some considerable period of time to find alternate accommodation. She suffers from osteoporosis. She has difficulties with movement. She has a carer. She needs a property on one level. She needs adaptations to the property. She did remark that there were certain difficulties with the property.
3. She would move out if she could find some alternate accommodation. She was looking both in the private and public section for accommodation but there was a scarcity of accommodation where she lived. She wanted to live locally.
4. The applicants set out that Kim Kirk required the property. She too has medical needs. She and her husband are separated. The original intention was that she was going to live in the property at the farm. She could no longer do so because (in particular) toilet facilities were upstairs.
5. They did not own any other property. In fact the farm property was rented.

Findings in Fact

1. The applicant Kim Kirk entered into a Lease for the property at 34 Victoria Street, Kirkpatrick Durham, Castle Douglas DG7 3HQ with the respondent on 4 December 2017.

2. The respondent has been attempting to secure alternate accommodation.
3. The respondent John Walsh is the owner of the property.
4. John Walsh and Kim Kirk are separated.
5. Kim Kirk is living with her mother.
6. She requires the property at 34 Victoria Street, Kirkpatrick Durham, Castle Douglas to live in.
7. She has no alternate accommodation.
8. The property at Whitecairn Farm, Kirkpatrick Durham, Castle Douglas is not suitable for Kim Kirk and her medical needs.

Reasons for Decision

1. The respondent acknowledged that Kim Kirk required to live in the property. Her only issue was that she in fact could not source alternate accommodation. The Tribunal accepted that she had been looking for alternate accommodation over a lengthy period of time. She has certain medical needs. The only reason she has not moved out is that she has not been able to secure alternate accommodation.
2. The Tribunal also accepted that Kim Kirk needs to live in that property. Kim Kirk and John Walsh are separated. She cannot live in the matrimonial home. It is not suitable for her. They do not own any other property.
3. Accordingly the Tribunal were satisfied that the ground for eviction was made out.
4. The Tribunal were also of the view that the order for eviction should be delayed for a period of three months to allow the respondent to try and obtain alternate accommodation.

Decision

To grant an order of eviction but to order that enforcement cannot take place for a period of three months.

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.

M Thorley

19th April 2024

Mark Thorley
Legal Member/Chair

Date