



**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) Act 2016 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/21/2708**

**Re: Property at 20 Brunstane Gardens, Penicuik, EH26 9AA (“the Property”)**

**Parties:**

**Mrs Ruth Keith, Cobwebs, Eddleston, Peebles, Scottish Borders, EH45 8QY (“the Applicant”)**

**Mr John Robertson, Miss Danielle Welsh, 20 Brunstane Gardens, Penicuik, EH26 9AA (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**Background**

The Applicant seeks an Eviction Order on the basis of ground 5 of Schedule 3 of the Act. The ground is said to be established on account of the Applicant’s son intending to live in the Property.

A Case Management Discussion (CMD) took place on 13 January 2022 and the Application was continued to a Hearing for evidence to be heard on the reasonableness or otherwise of granting the Eviction Order.

There was no issue with the competency of the notice to leave that had been served or any issue taken with the substance of the ground itself relied upon.

It was not disputed that the Applicant did wish her son to live in the Property and that he fell to be considered as a “*family member*” within the meaning set out in the ground. The Tribunal however did wish to be addressed and hear evidence on the issue of the reasonableness or otherwise of granting the eviction order as demanded by Ground 4 (2) (b) which provides that the Tribunal must also be “... *satisfied that it is reasonable to issue an eviction order...*”

### **The Hearing**

The Application called for a Hearing by conference call at 10 am on 31 March 2022. The Applicant was present. The Applicant had hitherto been represented by TC Young Solicitors but that firm had been disrupted by the spread of Covid-19 and they were unable to provide representation to the Applicant at the Hearing.

The Applicant wished to press on and did not wish for any adjournment or delay to proceedings to allow her to obtain alternate representation. The Applicant was ready to proceed and intended to give evidence herself and also for her son, Matthew Keith to give evidence.

The Second Respondent, Ms Danielle Welsh was present and confirmed that she was ready to proceed and that she would be the sole witness on behalf of the Respondents.

The Tribunal established that there were no preliminary matters that fell to be considered and so the Tribunal began hearing evidence. Each party had the right to question each witness and the Tribunal also asked questions throughout.

### **The Applicant- Ms Ruth Keith**

The Applicant owns the Property but currently lives with her husband and her son, Matthew, together with Matthew’s fiancé who also frequently spends time in the Applicant’s house.

The Applicant described her motivations for having her son move into the Property. The Applicant hopes that Matthew will then be able to buy the Property from the Applicant. The Applicant described all the benefits to her son of having him living in the Property. It would be a perfect location for him and his fiancé by being very close to Matthew’s work and would also provide him with room for a home office and secure parking for his valuable works van.

She also described her own current living situation as being cramped and explained that having Matthew move out would be of great assistance in freeing up space.

Ms Keith came across as being entirely genuine and truthful in her evidence.

### **The Applicant's son- Matthew Keith**

Matthew Keith is the Applicant's 23-year-old son who currently lives with the Applicant and his father. He described the current accommodation as being cramped. He described his motivations for moving into the Property with his fiancé and starting a family in the Property. It would also be close to his place of work in Penicuik and the main customer base of K Electrics- the company which Matthew has recently taken over the management of from his father.

Mr Keith also came across as being entirely genuine and truthful in his evidence. The Applicant had no other witnesses and closed her case at the conclusion of her son's evidence.

### **The Second Respondent -Danielle Welsh**

Danielle Welsh lives in the Property with her partner, John Robertson, her 19 year old son Brandon and her fifteen year old daughter, Tegan,

Ms Welsh enjoys very much living in the Property. She speaks highly of the local area and gets on well with her neighbours. She can walk to her work at a local care home where she works nightshifts. Her daughter Tegan can walk to her local school, Beeslack High School. Her son, Brandon has finished college and is now looking for work in the area. Ms Welsh's partner is unable to work due to a back injury. Ms Welsh is the sole source of income for the household. The family are understandably anxious about the prospect of having to move out of their home.

The Tribunal considered that Ms Welsh came across as being entirely genuine and truthful in her evidence.

Having heard evidence and having considered all the documentation, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The parties entered into a tenancy at the Property which commenced on 24 November 2019;*
- II. *The Applicant is the landlord and the Respondents are the tenants;*

- III. *The Respondents are in many ways ideal tenants in that they have dutifully paid the contractual monthly rent of £1,100.00 per month and have generally been on good terms with the Applicant;*
- IV. *The Respondents live in the Property with their two children, Brandon aged 19 and Tegan, aged 15;*
- V. *Tegan attends Beeslack High School and is in her fourth year while Brandon has finished college and is now looking for employment locally;*
- VI. *The children have friends who live locally and Tegan walks to school;*
- VII. *Ms Welsh works locally in a nursing home where she can also walk to work;*
- VIII. *The Respondent's family are settled in the area and get on well with their neighbours and are very happy in the Property;*
- IX. *On 12 July 2021, the Applicant served a Notice to Leave on the Respondents calling upon them to leave the Property by 15 October 2021;*
- X. *The Notice to Leave was based on ground 5 of the Act on the basis that the Applicant intends that her son should live in the Property;*
- XI. *The Applicant's son is called Matthew Keith and he is 23 years old. He currently lives with his parents in their house;*
- XII. *Matthew wishes to move into the Property with his fiancé and wishes to start a family and reside there for the long term;*
- XIII. *The Property is conveniently located for Matthew's business interests;*
- XIV. *The Applicant has complied with all legal requirements in respect of bringing this Application including s 11 of the Homelessness Etc (Scotland) Act 2003;*

### **Reasons for Decision**

The Tribunal adjourned to consider matters. The issue of the reasonableness of granting an Eviction Order was finely balanced. On one hand the Applicant and her son had perfectly legitimate reasons for wishing for Matthew to live in the Property. It was a sensible plan. But on the other hand, the Property was currently let to a well settled, hardworking family whose interests deserved to be treated with great respect.

The Tribunal acknowledges that moving home would be a source of great disappointment and some anxiety to the Respondents and their family.

The Tribunal conducted a judicial exercise in weighing up the competing factors and decided, by a fine margin, that it would be reasonable to grant the Eviction Order.

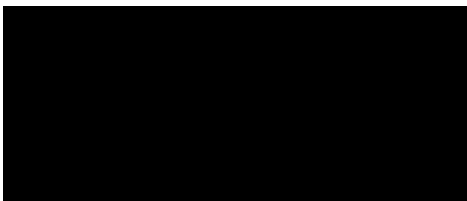
However, the Tribunal considered that it would be unacceptable to expect the Respondents to relocate in the timescales commensurate with an order being granted in the usual manner.

Accordingly, the Tribunal decided to engage the powers set down in Regulation 16A (d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to delay enforcement of the Eviction Order to be granted for a period of six months from today's date.

This period of time will allow the Respondents time to organise and obtain alternate accommodation in a manner that affords them the high levels of respect their circumstances deserve.

### **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**

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**Date: 31 March 2022**