



**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/21/2969**

**Re: Property at 31 Warmanbie Road, Brydekirk, Nr Annan, Dumfries and Galloway, DG12 5ND (“the Property”)**

**Parties:**

**Mr Ross Anderson, Millriggs Farm Hutton, Boreland, Lockerbie, DG11 2PB (“the Applicant”)**

**Mr Joseph Sturgeon, formerly residing at 31 Warmanbie Road, Brydekirk, Nr Annan, Dumfries and Galloway, DG12 5ND, and whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

This was an application for an eviction order dated 30<sup>th</sup> November 2021 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with his application copies of the tenancy agreement, notice to leave with proof of service, section 11 notice with proof of service, and various documents and affidavits from family members.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement.

### **Case Management Discussion**

A Case Management Discussion was held at 10:00 on 7<sup>th</sup> April 2022 by Tele-Conference. The Applicant did not participate, but was represented by Miss Brown, solicitor. The Respondent did not participate, nor was he represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Miss Brown with reference to the application and papers to grant the order sought on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 7<sup>th</sup> July 2021 relied on ground 5 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that a member of the Applicant's family, namely his father-in-law, intends to live in the Property.

The Applicant had provided sworn affidavits from himself and from his father-in-law confirming that the Applicant's father-in-law intends to live in the Property as his only or principal home for at least three months, in order that he is closer to the Applicant and his family.

Miss Brown explained the history of events in relation to the Property. The Respondent moved in to the Property whilst the Applicant was attempting to sell it. After those attempts came to nothing, the Applicant's family discussed the possibility of instead retaining the Property for his father-in-law to reside in, as the journey from his home in Cumbria was becoming challenging for him due to the distance between there and the Applicant's home.

### **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private

residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Paragraph 5 of Schedule 3 to the Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property. The Tribunal may find that this ground applies if (1) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact. Paragraph 5 provides that a father-in-law of the landlord is a qualifying relative.

The Tribunal was satisfied that ground 5 had been established. The landlord's father-in-law intends to occupy the Property as his only home for at least 3 months, and *prima facie* the Applicant had made out that it was reasonable to issue an eviction order on account of that fact.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where *prima facie* reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

In those circumstances, having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

## **Decision**

In these circumstances, the Tribunal made an eviction order against the Respondent in this application.

## **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.**

Neil Kinnear

07/04/2022

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**Legal Member/Chair**

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**Date**