



**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/22/0243**

**Re: Property at 41 Loraine Road, Dundee, DD4 7DY (“the Property”)**

**Parties:**

**Mr Gordon Bruce, 2 The Walled Garden, Strathmartine, Dundee, DD3 0GA (“the Applicant”)**

**Ms Kirsty Bennett, 41 Loraine Road, Dundee, DD4 7DY (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an eviction order against the Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal dated 26<sup>th</sup> January 2022 the Applicant sought an eviction order against the Respondent under ground 4 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-
  - (i) Copy Private Residential Tenancy Agreement between the parties dated 27 April 2021;
  - (ii) Notice to Leave dated 11<sup>th</sup> October 2021, confirming that proceedings would not be raised any earlier than 14 January 2022 and citing ground 4 of schedule 3 of the 2016 Act;
  - (iii) Copy email confirmation of service of Notice to Leave on the Respondent dated 11 October 2021; and

- (iv) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council together with proof of service by email dated 26<sup>th</sup> January 2022;
- 2 By letter dated 15 February 2022 the Tribunal sought further information from the Applicant, namely evidence that ground 4 was met, and authorisation from the joint owner for the Applicant to proceed with the application. By email dated 2 March 2022 the Applicant's representative Gilson Gray LLP provided written authorisation from the joint owner Mrs Karen Bruce. The representative further advised that the property currently occupied by the Applicant belonged to a family member and the relationship had broken down, therefore the Applicant and his family had been asked to remove from the property. The owner of the property had marketed it for sale. The Applicant therefore required to resume occupation of 41 Loraine Road, Dundee. The representative provided a schedule of particulars for the property currently occupied by the Applicant at 2 The Walled Garden, Strathmartine, Dundee.
- 3 By Notice of Acceptance of Application dated 14 March 2022 the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 18 May 2022. A copy of the application paperwork together with the date and time of the Case Management Discussion with instructions for joining the teleconference was served upon the Respondent by Sheriff Officers on 31<sup>st</sup> March 2022.
- 4 By email dated 4<sup>th</sup> April 2022 the Respondent submitted written representations in response to the application. In summary she highlighted an error in the Applicant's address in both the tenancy agreement and the Notice to Leave which cited it as 3 The Walled Garden, not 2 The Walled Garden. The Respondent submitted that the Notice to Leave would therefore require to be re-issued. The Respondent further questioned the fact that the Home Report had only been instructed after the application was lodged with the Tribunal. The Respondent asked for the application to be referred back to the Legal Member who had issued the Notice of Acceptance of Application for review. The Tribunal considered the Respondent's request, but concluded that there was no mechanism for an application to be referred back to the sifting stage, and the Respondent was advised that these matters could be explored at the Case Management Discussion.

### **Case Management Discussion**

- 5 The Case Management Discussion took place on 18 May 2022. The Applicant was represented by Tanya Royle of Gilson Gray Solicitors. The Respondent was present and accompanied by Mr Mark Harris as a supporter.
- 6 The Legal Member explained that the application had been brought under ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which states that it is an eviction ground that the landlord intends to live in the let property. The Tribunal may find that the ground applies if the landlord

intends to occupy the let property as their only or principal home for at least three months and it is reasonable to make the order.

- 7 The Legal Member explained the procedure to be followed at the Case Management Discussion and the issues that the Tribunal required to consider. The parties were asked to address the Tribunal on the issues which are outlined below along with a summary of the submissions from the parties. For the avoidance of doubt, this is not a verbatim account of what was discussed but a summary of the key points raised during the discussion.

(i) *The validity of the Notice to Leave*

The Respondent's position was that the Notice to Leave is not valid, as there is an error in the Applicant's address. The Legal Member explained that an error in the document does not make it invalid unless the error materially affects the effect of the document. The Applicant's position was that the Notice to Leave was served correctly and there was simply an administrative error in the Applicant's address which made no difference to the effect of the document, in terms of the requirements of the Act. The Respondent's position was that the error had a material effect, and also gave the view that she had not been given sufficient notice, on the basis that the Landlord has no intention of moving back into the property. She referred to an advertisement that she had found online in January of this year, at the time the Notice to Leave was served, that suggested the property was being relet.

(ii) *The landlord's intention to live in the let property*

The Applicant's position was that he intends to move himself and his family back into the property. They were currently occupying another property which is owned by a family member, but the relationship has broken down. The Applicant denied any intention to relet the property. The Respondent's position was that the Applicant has advertised the property for let and she stated that she had evidence to support this in the screenshots from the letting website.

(iii) *The reasonableness of granting the order.*

The Applicant's position was that the granting of the order was reasonable. The Respondent had vacated the property and had a new property. Housing benefit has been transferred there. The Respondent was trying to delay the proceedings unnecessarily in order to cause stress and economic harm to the Applicant. No rent was being paid for the property. The Applicant required to move back otherwise he would have nowhere else to go. The Respondent's position was that she is still staying at the property, albeit she does have a lease of another property due to safety concerns. She suffers from depression and anxiety and had been bullied and harassed by the Applicant and his associates.

- 8 Having heard from the parties, the Tribunal noted the issues to be resolved as
- (i) Whether the error in the Applicant's address in the Notice to Leave materially affects the effect of the document;
  - (ii) Whether the Applicant advertised the property for relet on or around the time the Notice to Leave was served;
  - (iii) Whether the Respondent has vacated the property; and
  - (iv) Whether it is reasonable to make the order for eviction.
- 9 The Tribunal therefore determined to fix a hearing. The parties were advised of the preparation that would be required in advance of the hearing and confirmed that a Direction would be issued in due course regarding the submission of any additional evidence or lists of witnesses.
- 10 The Tribunal subsequently received further documents from both parties. The Applicant submitted the following:-
- (i) Email from Scott and Co, Sheriff Officers, with trace report dated 14<sup>th</sup> April 2022 confirming the Respondent's new address in Dundee;
  - (ii) Occupancy Report from Sheriff Officers dated 12<sup>th</sup> April 2022;
  - (iii) Certificate of Motor Insurance dated 22 December 2021 confirming the Applicant's address as 41 Loraine Road, Dundee;
  - (iv) Application by the Applicant to Dundee City Council for a lockup garage dated 16<sup>th</sup> May 2022 which confirmed his address as 41 Loraine Road, Dundee;
  - (v) Copy order form by the Applicant dated 6 April 2022 for delivery of items to the property at 41 Loraine Road, Dundee;
  - (vi) Text confirming house sold subject to pool survey, with date of exchange noted as 5<sup>th</sup> August 2022;
  - (vii) Email from Octopus Energy to the Applicant dated 27 May 2022 confirming the last meter reading submitted in respect of 41 Loraine Road was on 7<sup>th</sup> March 2022 and confirming that the previous tenant had moved out;
  - (viii) Email from Dundee City Council's Revenues Division dated 31 May 2022 confirming that the previous tenant had advised the Council they had vacated the property at 41 Loraine Road, Dundee;
  - (ix) Email from the Applicant to Dundee Homefinder Service dated 7 February 2022 confirming reference for the Respondent could be shared with another letting agent;
  - (x) Rent Ledger showing arrears of £3100 as at 1 June 2022;
  - (xi) External photographs of 41 Loraine Road, Dundee;
  - (xii) Email from BS Properties dated 18 May 2022 to the Applicant confirmed that they had not been instructed to market the property for let;
  - (xiii) Email from the Applicant dated 1 June 2022 to his representative confirming that there was an active mail redirection in place for 41 Loraine Road, Dundee.
- 11 The Respondent submitted the following documentation;

- (i) Screenshot of Google search engine results showing 41 Loraine Road for let, undated;
- (ii) Email acknowledgement from BS Properties dated 19 February 2022 for property at Loraine Road;
- (iii) Schedule of Particulars for 2 The Walled Garden, Strathmartine, Dundee;
- (iv) Home Report for 2 The Walled Garden, Strathmartine, Dundee, dated 11 February 2022; and
- (v) Copy email correspondence between Mr Mark Harris and Mrs Tanya Royle, dated 19<sup>th</sup> May, 29<sup>th</sup> May and 30<sup>th</sup> May 2022.

The Respondent also submitted a list of seven witnesses, namely Mrs Karen Bruce, Mrs Gillian Baylford-Deans, Mr Mark Harris, Ms Claire Hughes, Mr Brian Stewart, Mr Iain Morris and Mr Barry Birse.

## The Hearing

- 12 The hearing took place on 21<sup>st</sup> July 2022. Mrs Royle appeared again on behalf of the Applicant who was also in attendance. Mr Mark Harris appeared on behalf of the Respondent. Shortly prior to the hearing the Tribunal had received an email from the Respondent advising that she had tested positive for coronavirus and would not be able to attend the hearing. Mr Harris would represent her in the proceedings. The Tribunal confirmed with Mr Harris that the Respondent was not seeking an adjournment, she was keen for the matter to be resolved and was content for the hearing to proceed in her absence.
- 13 Mrs Royle objected to Mr Harris representing the Respondent, on the basis that he was unsuitable, and requested that the hearing proceed in the absence of the Respondent. Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedural Rules 2017 as amended (“the Procedural Rules”) state that *“a party may be represented by any proceedings by a representative whose details must be notified to the First-tier Tribunal prior to any hearing”* and that the Tribunal may order that a lay representative is not to represent a party if it is of the opinion that the lay representative is an unsuitable person to act as a lay representative or it is satisfied that to do so would be in the interests of the efficient administration of justice. The Tribunal noted that the Respondent had submitted the details of her representative prior to the hearing. There was also nothing before the Tribunal to suggest that Mr Harris was not a suitable person to act on her behalf and it would be in the interests of justice to have the Respondent represented if that was her wish. On that basis the Tribunal refused the request from the Applicant and determined to proceed with the hearing.
- 14 It should be noted from the outset that this was a particularly challenging hearing, with both parties expressing objection at various points with the manner in which the hearing was conducted. The absence of the Respondent did create difficulties, however Mr Harris had been clear at the start of the hearing that she wished it to proceed in her absence. At all times during the hearing the Tribunal was mindful of the overriding objective, that is to deal with proceedings justly, including ensuring, so far as possible, that parties are on an equal footing procedurally and able to participate fully in the proceedings, and seeking

informality and flexibility in proceedings. The Tribunal has a level of discretion in the way it regulates its own procedure in order to promote the overriding objective and was satisfied that parties were given a fair hearing, taking into account the difficulties faced on the day.

- 15 For the avoidance of doubt, the following is a summary of the evidence relevant to the Tribunal's determination of the application and not a verbatim account of what was said at the hearing.
- 16 The Tribunal first heard from the Applicant, who was questioned by Mrs Royle. Mrs Royle noted as a preliminary matter, that she would not intend on leading any evidence regarding the validity of the Notice to Leave. The Respondent appeared to have conceded that the Notice was valid in terms of the requirements of the 2016 Act. The error in the Applicant's address did not materially affect the effect on the Notice to Leave. Mrs Royle then questioned the Applicant on the remainder of the issues to be resolved.
- 17 Mr Bruce confirmed that he had every intention of moving back into the property at 41 Loraine Road. He referred to the certificate of motor insurance that he had obtained in December 2021, with the expectation that he would be moving back into the property in January when the Notice to Leave expired. It would have saved administration costs by putting 41 Loraine Road on the certificate, and he considered that to be his residence. Mr Bruce confirmed that he and his family had been asked to remove from the property at 2 The Walled Garden, Strathmartine, Dundee. The request had been made in September 2021, at which point Mr Bruce had taken legal advice and had served the Notice to Leave on the Respondent. He had discussed this with the Respondent personally before sending the Notice and she had fully accepted the position at that time. She had been looking for properties herself and he had provided her with references to assist that process, as could be seen from the email correspondence with the Dundee Homefinder Service. That was one of three references that he had provided for the Respondent. She was keen to move out of the property. Mr Bruce confirmed that he had been trying to help the Respondent. The relationship had been a positive one, she had been a good tenant, however something had changed in January 2022.
- 18 Mr Bruce noted the screenshots of 41 Loraine Road, and the email from BS Properties that had been provided by the Respondent in her productions. Mr Bruce confirmed that the property had been listed for let in around 2018 for one week with BS Properties, however he had subsequently instructed another letting agent to market the property. Mr Bruce had not had any further dealings with BS Properties until 18<sup>th</sup> May 2022 when he had contacted them to ask why the property was showing for let online. BS Properties had confirmed this was an error and the property was removed. Mr Bruce referred to the email from BS Properties which supported this. The email the Respondent had produced from BS Properties acknowledging interest in the property was a generic reply to any queries received through the BS Properties website. Mr Bruce had not been aware the property was showing online until it was mentioned by the Respondent at the Case Management Discussion. She had not advised him on

this previously. The last contact he had with the Respondent was on 15<sup>th</sup> January 2022.

- 19 Mr Bruce referred to the text message that had been lodged in his productions, which referred to the property he was currently occupying at 2 The Walled Garden, Strathmartine, Dundee. The text was from the owner, confirming that the property had been sold with an expected exchange date of 5<sup>th</sup> August 2022. He and his family would need to remove from the property by the 29<sup>th</sup> or 30<sup>th</sup> July 2022 at the very latest. Mr Bruce confirmed that he did not have any other properties and would have to stay with friends or at a hotel. Mr Bruce confirmed that he was not a professional landlord, 41 Loraine Road was his home for over 10 years and had been in his family for over 40 years. His family would be homeless if he didn't get access to the property. Mr Bruce advised that the process to get the property back had cost him thousands to resolve. He had a son at university in Edinburgh and couldn't incur such costs. Mr Bruce stated that at no point was it his intention to relet the property. His intention was to move back into his home. Mr Bruce did not know why the Respondent had taken the position she had, he hadn't spoken with her directly since January. He repeated that the relationship had been positive up until that point.
- 20 Mr Bruce referred to the emails from Octopus Energy which had been lodged with his productions. They had confirmed that the Respondent had left the property and given a final meter reading on 7<sup>th</sup> March 2022. Mr Bruce knew she had moved out, from talking with neighbours. The Respondent had subsequently been traced to her new tenancy. Mr Bruce also made reference to the email from Dundee City Council's Revenues Section. The Respondent had been in receipt of housing benefit and he didn't understand how she was able to afford two tenancies. The Council had confirmed that she had moved into another property and her benefits had been transferred to the new address.
- 21 Mr Bruce referred to the trace report from Sheriff Officers which had been instructed in an attempt to find the Respondent. She had been traced to a new property in Dundee. Mr Bruce confirmed that the Respondent still had personal effects within the property. His representative had questioned whether she would return the keys however she stated that she was waiting for the Tribunal process to conclude. It was clear to Mr Bruce that she had vacated the property and was now residing at her new address.
- 22 Mr Bruce referred to the email he had sent to his representative with confirmation from Royal Mail that a redirection was in place for 41 Loraine Road. Mr Bruce had ordered goods online for delivery to the property with the expectation that he was moving back in. He had phoned the Post Office who had confirmed that a redirection was in place, and it was not in his name. That was the extent of the information they could give him.
- 23 Mr Bruce confirmed that the insurance held for the property at 41 Loraine Road would be invalid if the property remained empty for more than 30 days. He referred to the external photographs of the property that had been lodged with

his productions. The property looked unoccupied. The garden was overgrown and complaints had been received from neighbours. Mr Bruce confirmed that the Respondent had maintained the garden when she was in occupation, it was always clean and tidy. The bins had never moved in recent months. One was still full of papers. The neighbours had not seen the Respondent. Everything looked closed up and vacant.

- 24 Mr Bruce stated that the process had been financially draining and had placed significant stress on his family. The Respondent, through Mr Harris, had indicated that she intended on prolonging the matter for as long as possible. The Respondent had been given plenty of notice to vacate, but had turned on him for some reason. This appeared to occur when Mr Harris became involved. Mr Bruce advised that Mr Harris had bombarded his solicitor with emails.
- 25 In response to questions from the Tribunal Mr Bruce confirmed that the text message produced, confirming the sale of 2 The Walled Garden, Strathmartine, Dundee, was from the family member who owned the property.
- 26 Mr Harris was then given the opportunity to question Mr Bruce on his evidence. The Tribunal had to intervene at points to highlight areas which were not relevant. In particular Mr Harris wished to refer Mr Bruce to emails which had not been lodged in process.
- 27 Mr Bruce concluded his evidence. At this point in the hearing, Mr Harris confirmed that he intended on leading two witnesses from the list of seven submitted by the Respondent, namely Ms Claire Hughes and Mr Iain Morris. The Tribunal allowed a short adjournment for Mr Harris to make contact with the witnesses. Mr Harris subsequently advised that he had been unable to speak with them but had left messages. He could not guarantee when they would join the hearing. Mr Harris then asked the Tribunal for an adjournment of the hearing to enable the Respondent to seek legal advice. Mrs Royle objected to the request for adjournment and asked that the matter proceed.
- 28 The Tribunal adjourned to consider the request from the Respondent. Upon resuming the hearing, the Tribunal concluded that it would not be willing to allow an adjournment of the matter, primarily on the basis that the hearing was already underway and Mr Harris had confirmed that the Respondent wished it to proceed. Advice had been given to the Respondent at the Case Management Discussion regarding the conduct of the hearing, including the presence of any witnesses. The Notice to Leave had been served on the Respondent in October 2021 and she had therefore had ample time to seek legal advice regarding her position. The Tribunal also had to take into account the prejudice to the Applicant in any adjournment of the matter. On that basis the Tribunal refused the Respondent's request.
- 29 Mr Harris then intimated that he wished to withdraw from representing the Respondent for the remainder of the hearing. The Tribunal explained that consequences for the Respondent in doing so, in that she would not have the



opportunity to have a representative put forward her position on the matter. Mr Harris subsequently agreed that he would continue to represent the Respondent and would assist in taking the Tribunal through the productions she had lodged.

- 30 Mr Harris confirmed that, in respect of the Notice to Leave, the Respondent conceded that it was a valid Notice. The issue was the Applicant's intention. The productions lodged by the Respondent showed that the property at 41 Loraine Road had been marketed at an increased rent, with reference to the Google search results. The property was currently let at £775 per month in terms of the tenancy agreement between the parties, however it was being advertised at £975. The Tribunal noted that the excerpt from the Google search did not show a rental figure, however Mr Harris confirmed this was in the advertisement. He confirmed that the photographs used in the advertisement were not current, they were old photographs. The property had been marketed with the old particulars. Mr Harris referred to the email from BS Properties in February 2022. They were getting in touch to arrange a viewing of the property, which was evidence that it was actively being marketed. If that was the case, the Applicant was not entitled to rely upon ground 4 of schedule 3 of the 2016 Act. He should have given the Respondent a six month notice period, not three months. Mr Harris confirmed that since May the property was no longer being marketed therefore he had to produce the screenshot of the Google search, rather than an advertisement. The listing was no longer active.
- 31 Mr Harris referred to the property particulars for 2 The Walled Garden and noted that the information was dated March, April and May which was after the application was lodged with the Tribunal and the Tribunal had specifically asked for proof that the property was being marketed. This had then led to a home report being undertaken and property particulars being drawn up, which Mr Harris stated showed an empty house. This was a significant factor, because Mr Bruce had advised the Respondent he was being evicted on 28<sup>th</sup> January. He questioned why the property at 2 The Walled Garden was not marketed until after the Tribunal had issued its dates and queried whether the property was in fact being actively marketed.
- 32 Mr Harris explained that the email from himself to Mrs Royle outlined what was happening between the parties at that time. The Respondent was under enormous pressure from the Applicant and other parties which resulted in emails being sent to the Applicant's solicitor asking the Applicant and others to stay away from the property at 41 Loraine Road and not put the Respondent under any pressure. Mr Harris stated that the Applicant had turned up at the Respondent's son's school. There was also an occasion in March when the Respondent returned to the property to find the door open. Mr Harris stated that the productions lodged were from third parties, and not influenced by the Respondent in any way. She was not connected to BS Properties.
- 33 Mr Harris advised that he had asked the Applicant's solicitor for an undertaking that the Applicant would leave the Respondent alone. This had not been produced. The Respondent had therefore been made to seek alternative accommodation. She wanted to move as a result of the harassment and took the

decision to obtain a smaller property. She wanted to be left in peace to leave the property at 41 Loraine Road, with a correct Notice to Leave, once she had seen out her lease. Mr Harris noted Mr Bruce's comments that she was a good tenant. Her belongings were still in the property at 41 Loraine Road and she still returned to the property from time to time. Mr Harris stated that he had been in the property business for 35 years and had never seen a tenant treated the way the Respondent had been treated. The Applicant would be entitled to his property back if he served the correct notices.

- 34 In response to questions from the Tribunal Mr Harris advised that he believed the Respondent had a signed tenancy agreement for her current property. She had been given a reference by Mr Bruce. Mr Harris understood this had been done through a womens refuge. The Respondent was a vulnerable person and had fled the property because of the pressure she was put under. However she would return to 41 Loraine Road if she could. The property still had electricity.
- 35 Mrs Royle was given the opportunity to question Mr Harris but declined to do so, on the basis that she objected to him purporting to give evidence on the Respondent's behalf.
- 36 Both parties were given the opportunity to make final submissions. Mrs Royle stated that the evidence was quite clear, and showed the Applicant's intention to move back into the property. It was clear that the Respondent had moved out. Final electricity readings had been submitted and the Respondent had advised the Council that she had vacated in March 2022. She had also advised Sheriff Officers that she was now living at her current property. The Applicant had been clear that it was the intention of the owner of his current address to sell that property, therefore he required to move back to 41 Loraine Road. There was now an urgency to this, as the property had been sold with an exchange date of 5<sup>th</sup> August 2022.
- 37 With regard to the alleged marketing of the property, Mrs Royle stated that it was evident this had been an error on the part of BS Properties which they had confirmed to the Applicant. It had been old information that remained on their website and once brought to their attention it had been removed. The Applicant had not instructed BS Properties to market the property and did not intend on reletting the property. Ms Royle stated that it was a concern that the Respondent had stated at the Case Management Discussion that she was still living at Loraine Road. She was clearly not living in the property, that was evident from the lack of electricity, rubbish and payments of rent. That was an intentional fabrication, designed at causing the Applicant personal and economic hardship. The conduct of the Respondent through her representative had been vexatious. Mrs Royle advised that she sought an award of expenses on that basis, given the unreasonable behaviour of the Respondent and the unnecessary time and expense the Applicant had incurred.
- 38 Mrs Royle stated that the Respondent had requested a hearing in the matter. However the evidence she had provided in no way proved that the Applicant did

not intend on living in the property. It clearly showed his intention to move back in as soon as possible. He was now desperate, having been asked to vacate the property at 2 The Walled Garden by 30<sup>th</sup> July at the latest. There was no tenancy agreement in place for that property, it had been a family arrangement. Mrs Royle pointed out that, should the Respondent consider in future that the Applicant had not returned to 41 Loraine Road, she would have a remedy under the 2016 Act for unlawful eviction. However it was quite evident that the Respondent did not reside at 41 Loraine Road. She was now in a new property. The Applicant would be happy to allow her to remove her remaining items from the property. Mrs Royle moved the Tribunal to grant the eviction order and to issue an early extract. This was a power available to the sheriff courts, and the Tribunal should have the same powers.

- 39 Mr Harris on behalf of the Respondent stated that the evidence lodged was clear. The Notice to Leave incorrectly cited ground 4, but this was not accurate in respect of the Applicant's intentions to move back into the property. The property was marketed for relet by the Applicant. The Respondent wished to stay in 41 Loraine Road. She did flee the property. The Respondent had been asked to provide a meter reading in March and she had done so. There remained electricity in the property and the Respondent still returned there. The move to her new property was done in haste. The Respondent was a single parent and not in a highly paid job. She was more than willing to repay any outstanding rent arrears on the condition that she was left in peace. Mr Harris considered that to be reasonable. Mr Harris explained that in representing the Respondent he was trying to assist all parties. Mr Harris stated that there were things in emails that had been said to support the Respondent's claims of bullying and harassment which he had not be allowed to refer to.
- 40 Mr Harris advised that he did not think expenses were just in this case as the Respondent had acted with "clean hands". He asked the Tribunal to dismiss the application and not make any order. He asked the Tribunal to look at the full picture of how the Respondent was treated.
- 41 The hearing concluded and the Tribunal determined to issue its decision in writing once it had the opportunity to consider the evidence submitted by both parties.
- 42 It should be noted that neither witness contacted by Mr Harris joined the remainder of the hearing at any point, despite having been provided with the conference call details.

### **Relevant Legislation**

- 43 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

## **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

## **51 First-tier Tribunal’s power to issue an eviction order**

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

## **52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

#### **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*

*(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) the eviction ground mentioned in subsection (3), and*

- (ii) an eviction ground, or grounds, mentioned in paragraph (a)*
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
  - (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
  - (b) that the tenant has a relevant conviction, [ground 13]*
  - (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
  - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*
- (3C) This subsection applies if—*
  - (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
    - (i) that the landlord intends to live in the let property, [ground 4]*
    - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
    - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
    - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
  - (b) the only eviction grounds stated in the notice to leave are—*
    - (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
    - (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

**62 Meaning of notice to leave and stated eviction ground**

- (1) References in this Part to a notice to leave are to a notice which—*
  - (a) is in writing,*
  - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*
  - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
  - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

### **Schedule 3, Part 4**

#### **Landlord intends to live in property**

*4 (1) It is an eviction ground that the landlord intends to live in the let property.*

*(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.*

*(3) References to the landlord in this paragraph—*

*(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,*

*(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.*

*(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.*

### **Findings in Fact and Law**

44 The Applicant and Respondent entered into a private residential tenancy agreement dated 27 April 2021.

45 The tenancy was a private residential tenancy as defined by section 1 of the Private Housing Tenancies (Scotland) Act 2016.

46 On 11<sup>th</sup> October 2021 the Applicant served the Respondent with a Notice to Leave by email. The Notice to Leave cited ground 4 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016.

- 47 The Notice to Leave is in the prescribed form required by Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 48 The Applicant currently resides at 2 The Walled Garden, Strathmartine, Dundee.
- 49 The owner of the property at 2 The Walled Garden, Strathmartine, Dundee advised the Applicant that she intended to sell the property. The owner obtained a home report dated 11 February 2022 and schedule of particulars for the property.
- 50 The property at 2 The Walled Garden has been sold and is due to exchange on 5<sup>th</sup> August 2022.
- 51 The Applicant requires to remove from the property at 2 The Walled Garden, Strathmartine, Dundee.
- 52 The Applicant intends to move back into the property at 41 Loraine Road, Dundee as soon as possible.
- 53 The Respondent is not residing at 41 Loraine Road, Dundee.
- 54 The Respondent has a tenancy agreement for another property, where her benefits are paid to.
- 55 No rent has been paid by the Respondent for the property at 41 Loraine Road since March 2022.

### **Reasons for Decision**

- 56 The Tribunal took into account the terms of the application, written representations from the parties and the evidence and submissions from the hearing in order to reach its decision. The Tribunal was satisfied that it had sufficient information upon which to reach a determination of the application.
- 57 It was regrettable that the Respondent had been absent from the hearing, as the Tribunal was not given the opportunity to hear directly from her. However Mr Harris had been clear at the outset of the hearing that she wished it to proceed in her absence, therefore the Tribunal considered it reasonable and proportionate to continue on that basis. The absence of any of the witnesses the Respondent had indicated she would be bringing to the hearing also diminished her position. The Tribunal was therefore largely proceeding on the documentary evidence she had lodged, which Mr Harris had endeavoured to speak to at the hearing.



- 58 Based on its findings in fact, the Tribunal ultimately preferred the evidence of the Applicant regarding this matter. The Tribunal accepted his explanation of the purported marketing of 41 Loraine Road, and noted the correspondence from BS Properties which supported that position. The Tribunal had been given no reason to doubt his intention to return to 41 Loraine Road and did not accept the Respondent's position that he in fact intended on reletting the property. Whilst Mr Harris had made reference to the home report and schedule of particulars being produced after the Tribunal had requested evidence of this, the Tribunal did not accept that to be the case, noting that the home report had been undertaken on 4 February 2022, before the Tribunal had contacted the Applicant in those terms. The evidence produced by the Applicant in respect of the use of the address at 41 Loraine Road for various purposes dating back to December 2021 indicated a clear expectation that he would be returning to the property.
- 59 The Tribunal was also conscious that the Respondent had now found alternative accommodation and accepted that she was no longer residing at 41 Loraine Road. The Tribunal did not consider it had sufficient evidence from the Respondent to make any findings regarding bullying and harassment by the Applicant. There was no correspondence submitted by the Respondent that would support this and no witnesses had been called to support any of the allegations made. Reference having been made to such emails by Mr Harris during the hearing but these had not been produced by the Respondent. The email that had been submitted, namely an email from Mr Harris to Mrs Royle did not, in the view of the Tribunal, prove the claims that the Respondent had made regarding her reasons for vacating the property. On that basis the Tribunal did not accept the Respondent's position on these matters. The Tribunal concluded that it would therefore be reasonable to make an eviction order on the basis that the Respondent was no longer residing at 41 Loraine Road and had obtained a new tenancy elsewhere.
- 60 The Tribunal therefore found that ground 4 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 had been met and determined to make an eviction order. As was highlighted by Mrs Royle at the hearing, there would be remedies available to the Respondent under the 2016 Act, in the event that the Applicant does not return to reside at 41 Loraine Road within three months of the Tribunal's decision.
- 61 With regard to the application for expenses from the Applicant, Rule 40 of the Procedural Rules states:-
- (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.*
- 62 The Tribunal did not agree that the Respondent's conduct of the case was so unreasonable that it justified an award being made in this case. The defence

put forward at the Case Management Discussion was a stateable one, and the Tribunal was obliged to fix a hearing on that basis. The Respondent had not done anything else to delay or prolong the proceedings unnecessarily and the Tribunal did not therefore consider she had acted unreasonably as defined in Rule 40 of the Procedural Rules.

- 63 With regard to the request to reduce the extract period for the eviction order and allow immediate enforcement, the Tribunal noted that this was an option previously available to the Sheriff Court when dealing with private residential tenancies under the summary cause rules. However the rules of the sheriff court do not apply to the Tribunal, which is bound by the Tribunal's own Procedural Rules. Rule 41(2) of the Procedural Rules provides that an order cannot be enforced until the expiry of the period within which an application may be made for permission to appeal a decision of the Tribunal. Rule 16A of the First-tier Tribunal for Scotland Housing and Property Chamber Procedural Rules 2017 as amended permits the Tribunal to order a delay in the execution of any order, but it does not similarly provide for a reduction in the period for executing an order. On that basis that Tribunal concluded that it did not have authority to reduce the period for execution and therefore refused the request.
- 64 The decision of the Tribunal was unanimous.

### **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.**

## Ruth O'Hare

---

Legal Member/Chair

21 July 2022  
Date