



**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/22/0022**

**Re: Property at Corner Cottage, Little Cutstraw Farm, Stewarton, Kilmarnock, KA3 5JE (“the Property”)**

**Parties:**

**Mrs Jeanne Black and Mr Robert Black, The Farmhouse, Little Cutstraw Farm, Stewarton, KA3 5JE (“the Applicants”)**

**Ms Julie Borrett, Corner Cottage, Little Cutstraw Farm, Stewarton, Kilmarnock, KA3 5JE (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Sandra Brydon (Ordinary Member)**

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

At the Case Management Discussion (“CMD”), which took place by telephone conference on 20 April 2022, the Applicants were in attendance and were represented by Mr Alastair Johnston Harper Macleod, Solicitors, Edinburgh.

The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

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

The following facts were noted by the Tribunal:-

- That Cabin Developments Limited (“Cabin”) is the heritable proprietor of the Property.
- The Applicants act as agents for Cabin.
- That the Applicants on behalf of Cabin entered into a Private Residential Tenancy Agreement with the Respondent (“the Tenancy Agreement”).

- That the "Let Property" in terms of the Tenancy Agreement is not defined.
- That in terms of the Tenancy Agreement the tenancy commenced on 1 February 2018.
- That the rent payable by the Respondent in terms of the Tenancy Agreement is £350 per calendar month.
- That on 11 June 2021, on the instructions of the Applicants and Cabin, Harper Macleod served on the Respondent by recorded delivery post Notices to Leave requiring the Respondent's removal from the Property on or before 16 December 2021.
- That Notice to Leave was served by reference to Ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, namely that the Landlords intended to refurbish the Property.
- That on 5 January 2022 Harper Macleod emailed East Ayrshire Council a notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

## **The CMD**

At the CMD Mr Johnston and the Applicants made the following representations:-

- i. That notwithstanding that the Let Property is not defined in the Tenancy Agreement all parties knew and agreed that the Property was the subject of the Tenancy Agreement.
- ii. That the Property is located on an agricultural site where the Respondent and her husband previously lived in the farmhouse until their relationship broke down at which point the Respondent moved out. She subsequently entered into the Tenancy Agreement in respect of the Property.
- iii. That Respondent continues to live in the Property. She lives there alone.
- iv. That the Respondent has ceased to pay rent and is now 3 months in arrears although this is not advanced as a consideration relative to the eviction order sought.
- v. That the Respondent has not engaged with the Applicants or her agent relative to her continuing occupation of the Property or otherwise but in proceedings between the parties in the Sheriff Court relative to the Respondent's occupation of grazing land she has stated her intention to continue in occupation of the Property.
- vi. That the Property is in serious disrepair. In particular, the Property is attached to an unoccupied barn the roof of which is at risk of collapse. The roof over the Property is in serious disrepair and requires fully stripped and replaced to be wind and watertight. Damp proofing works are also required and substantial insulation installed. The extent of these and other works are such that they cannot be undertaken whilst the Property is occupied.
- vii. That the Applicants run small scale developments and have tried to negotiate with the Respondent with regard to the works required but she will not engage. Around a year ago the Respondent agreed to the Applicants having access but since then the relationship between the parties has broken down.
- viii. That the Respondent's state of health is unknown but she was seen by the Applicants at the farm on 19 April 2022 unloading heavy items and appeared fit and well.
- ix. That the Applicants have no alternative accommodation to offer the Respondent.
- x. That whilst the new extension that the Applicants intend to build at the Property is not essential it makes good sense to undertake that construction as part of the overall programme of works with downtakings and excavations being done during good periods of weather and with the roof and windows being stripped and made good to allow internal works to be carried out thereafter.
- xi. That on completion of the remedial works the Property, which currently has only one small bedroom, will be much more substantial with four bedrooms. The Property would then be too big for the Respondent and, in any event, relations between the parties are such that the Applicants would not contemplate leasing the Property to the Respondent again.

- xii. That the Applicants had offered to lease to the Respondent an outhouse and land to accommodate her animals. The Applicants instructed Harper Macleod to draw up a lease and terms were negotiated. However, the Respondent refused to sign the Lease and the legal costs incurred by the Applicants were wasted.
- xiii. That the Respondent is taking steps to deliberately irritate the Applicants, such as moving a dung heap to the boundary with the farmhouse where the Applicants reside.
- xiv. That the Property forms part of the "derelict farm buildings" referred to in the Full Planning Permission of East Ayrshire Council dated 16 February 2009. That the development approved in terms of the Planning Permission has begun with temporary works having previously been undertaken to the Property to refurbish and make it wind and watertight for the Respondent's mother who previously leased the Property from around 2016.
- xv. That a Building Warrant was granted around 6 weeks ago for the refurbishment works to be carried out to the Property.
- xvi. That the Respondent had, for a considerable period of time, been aware of the Applicants' plans to extensively refurbish the Property and that vacant possession would be needed and she accepted the position.
- xvii. That the situation between the Applicants and the Respondent is causing the Applicants considerable anxiety and stress.
- xviii. That it is reasonable that an eviction order be granted.

### **Findings in Fact**

- i. That the Applicants on behalf of Cabin entered into a Private Residential Tenancy Agreement with the Respondent ("the Tenancy Agreement").
- ii. That the "Let Property" in terms of the Tenancy Agreement is not defined but all parties knew and agreed that the Property was the subject of the Tenancy Agreement.
- iii. That in terms of the Tenancy Agreement the tenancy commenced on 1 February 2018.
- iv. That the rent payable by the Respondent in terms of the Tenancy Agreement is £350 per calendar month.
- v. That on 11 June 2021, on the instructions of the Applicants and Cabin, Harper Macleod served on the Respondent by recorded delivery post Notices to Leave requiring the Respondent's removal from the Property on or before 16 December 2021.
- vi. That Notice to Leave was served by reference to Ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, namely that the Landlords intended to refurbish the Property.
- vii. That on 5 January 2022 Harper Macleod emailed East Ayrshire Council a notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- viii. That the Respondent remains in occupation of the Property.
- ix. That the Property is in serious disrepair and substantial remedial works are required. The extent of these and other works are such that it is impractical for the Respondent to continue to occupy the Property whilst the works are undertaken.
- x. That the Applicants have previously secured for Cabin Planning Permission from East Ayrshire Council for the refurbishment works required to the Property.
- xi. That the Applicants have secured a Building Warrant for the refurbishment works required to the Property.
- xii. That the Respondent has failed to properly engage with the Applicants, Harper Macleod and the Tribunal.
- xiii. It is reasonable than an eviction order be granted in favour of the Applicants.

## **Reasons for Decision**

In the absence of the Respondent, the factual background was not in dispute and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it would be reasonable to grant an eviction order in the circumstances.

## **Decision**

The Tribunal granted an eviction order in favour of the Applicants.

## **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.**

Gillian Buchanan  
\_\_\_\_\_  
**Legal Member/Chair**

**20 April 2022**  
**Date**