



**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/22/0562**

**Re: Property at Carraig Dhubh North, Shore Road, Whiting Bay, Isle of Arran, KA27 8QP (“the Property”)**

**Parties:**

**Louise Roberts, Ladywell Cottage, Legerwood, Earlston, KA27 8QP (“the Applicant”)**

**Ashley Russell, Fiona Proctor, Carraig Dhubh North, Shore Road, Whiting Bay, Isle of Arran, KA27 8QP (“the Respondents”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms J Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents.**

**Background**

1. This is an application dated 28<sup>th</sup> February 2022, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an eviction order under ground 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) in respect of the Property which is the subject of a Private Residential Tenancy agreement between the parties commencing on 28<sup>th</sup> May 2020.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 11<sup>th</sup> August 2021, stating that an application would not be submitted to the Tribunal before 18<sup>th</sup> February 2022, with proof of service on 17<sup>th</sup> August 2021, a proposed refurbishment programme, Energy Performance Certificate and email correspondence with the Respondents.

3. Intimation of the application and Case Management Discussion was made upon the Respondents by Sheriff Officers on 28<sup>th</sup> April 2022.
4. By email dated 10<sup>th</sup> May 2022, the Respondent, Fiona Proctor, requested additional time to make representations to the Tribunal. Additional time was granted but no representations were received.
5. By email dated 24<sup>th</sup> May 2022, the Applicant's representative lodged an email from the Respondent, Ashley Russell, dated 13<sup>th</sup> May 2022 stating that the Respondent was agreeing to 28 days' notice to leave the Property, referring to a similar email from Fiona Proctor.

### **Case Management Discussion**

6. A Case Management Discussion ("CMD") took place by telephone conference on 24<sup>th</sup> May 2022. The Applicant was not in attendance, and was represented by Mr Scott Runciman, Solicitor. The Respondents were not in attendance.
7. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondents.
8. Mr Runciman moved the Tribunal to grant an eviction order, referring to the documents submitted to the Tribunal, which included a schedule of proposed refurbishment. He confirmed that the Respondents are actively in the process of removing from the Property. He had not lodged the email from Fiona Proctor stating that she was giving notice as it contained extra-judicial material, but he was happy to provide it if required. He has been informed that the Respondents will get the keys to their new property on 28<sup>th</sup> May. There would be no prejudice in granting the order and it may assist the Respondents with the local authority. He was aware that the Respondents had been in discussion with the local authority, but he was not aware of the details of the accommodation that they had secured, or whether they had presented as homeless.
9. Responding to questions from the Tribunal concerning the quality of the evidence produced, given that the Act states that the type of evidence that would tend to show the landlord's intention in terms of ground 3 includes, for example, planning permission or a contract between the landlord and an architect or builder, Mr Runciman said the list in the Act is not exhaustive. The Applicant has been in discussion with tradesmen to get costings for the proposed works. This has been hampered by a lack of access to the Property. The Applicant's intention is to refurbish the larger property which has been split into three properties, one of which is this Property.
10. Responding to questions as to whether it would be impracticable for the Respondents to continue to occupy the Property while the work was carried

out, Mr Runciman said it would be impracticable. It was likely that the work would take six to eight weeks.

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

11.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 28<sup>th</sup> May 2020.
  - (ii) Notice to Leave has been served upon the Respondents.
  - (iii) The Applicant intends to refurbish the Property.
  - (iv) It would be impracticable for the Respondents to continue to occupy the Property given the nature of the refurbishment intended by the Applicant.
  - (v) It is reasonable to grant an eviction order.

### **Reasons for Decision**

12. The Tribunal was satisfied that ground 3 was met, and that the Applicant intends to refurbish the Property, and that it would be impracticable for the Respondents to continue to occupy the Property given the nature of the refurbishment intended.
13. Although the Tribunal considered it would have been preferable to have seen additional evidence of intention, perhaps in the form of contracts or estimates from tradespeople, it accepted that the examples given in the Act were just examples and the list in the Act was not exhaustive.
14. In considering reasonableness, the Tribunal took into account the fact that the Respondents had not provided any representations or attended the CMD, and that, on the information before the Tribunal, the Respondents have already given notice of their intention to leave the Property.
15. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

16. An eviction order in respect of the Property is granted against the Respondents.

### **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.**

H Forbes  
Legal Member/Chair

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**24<sup>th</sup> May 2022**  
**Date**