



**Decision 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/23/3882**

**Re: Property at No 29. Cummertrees, Cummertrees, Annan, DG12 5QD (“the Property”)**

**Parties:**

**Miss Elizabeth Birkbeck, Estate Office, Hoddum, Lockerbie, DG11 1BE (“the Applicant”)**

**Mr Joseph Nelder, No 29. Cummertrees, Cummertrees, Annan, DG12 5QD (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at No 29. Cummertrees, Cummertrees, Annan, DG12 5QD under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is

based on Ground 11 (Breach of the tenancy agreement) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. The Respondent’s representative Doreen Beattie, the In Court Coordinator of D&G Citizens Advice Service lodged written representations on 29 February 2024. These stated that the Respondent was 93 years of age and had various health issues which required him to find alternative accommodation in residential care or sheltered housing with an appropriate care package which the Homelessness Options Team at the local authority were assisting with. Although the application to evict was not opposed the Respondent requested the Tribunal use their discretion to allow time for suitable alternative accommodation to be found.

### **Case Management Discussion**

3. The Tribunal proceeded with a Case Management Discussion on 25 March 2024 by way of teleconference. Mr Peoples from Turcan Connell, solicitors appeared on behalf of the Applicant. The Applicant and Katie Kolita were also in attendance. Ms Beattie from D&G Citizens Advice Service appeared on behalf of the Respondent. The Respondent’s son, Chris Nelder was also in attendance. The case was heard with an arrears action under case reference FTS/HPC/CV/23/3887.
4. Mr Peoples submitted that the Respondent was in breach of Clause 35 of the tenancy agreement with the Applicant by keeping numerous dogs at the premises. He submitted no permission had been given for dogs to be kept. In relation to reasonableness, he submitted that the Respondent’s breach was not isolated nor inadvertent but was persistent, deliberate and long standing. He referred the Tribunal to an undertaking signed by the Respondent on 31 August 2020 that he would not keep dogs. Despite that the Respondent continued to keep dogs. Mr Peoples submitted this was a wilful disregard of the tenancy agreement.
5. He further submitted the extent of the breach was significant. This was not a case where the Respondent was keeping one or two pets, but about 14 dogs being kept in trailers and makeshift kennels. The dogs caused nuisance and annoyance to neighbours by barking at all times of the day and night. One dog had escaped and killed a neighbour’s cat.
6. Mr Peoples also referred the Tribunal to the arrears action and submitted the Respondent had not paid rent for almost 7 months.
7. Further he submitted the Applicant had decided she wished to sell the Property. He referred the Tribunal to the letter dated 12 February 2024 lodged on behalf of the Applicant from Frazer Coogans Limited confirming instructions to act in the sale of the Property and neighbouring properties.

8. Finally, he submitted that the Respondent had had over six months to find alternative accommodation and that after the expiry of the appeal period that gave the Respondent further time to move. In the circumstances he moved that it was reasonable to evict.
9. In response, Ms Beattie confirmed the application to evict was not opposed. She submitted that she had been working with Social Work who were treating the Respondent's case as a priority referral to care homes. Social Work were hopeful that they would be able to secure the Respondent a place in a care home within the next two months. She submitted that if the Respondent had to move before then he would be placed in temporary accommodation which could be detrimental to his health. Accordingly, she asked the Tribunal to give extra time to allow the Respondent to move to a permanent care home placement.
10. Mr Nelder confirmed that although he lived with his father as he needed 24-hour care, he was planning to leave the Property when his father moved out.
11. On being questioned by the Tribunal as to whether there was any objection to more time being given to allow the Respondent to move to a care home, the Applicant explained she was under pressure to get the Property back as she was under pressure to sell all three properties which were detached.

### **Decision**

12. The Tribunal were satisfied that the requirements under the 2016 Act in relation to the service of the Notice to Leave had been met. There was no opposition to the application and no facts were in dispute. The Tribunal was satisfied therefore that the Applicant had established a ground to evict in terms of Ground 11 of Schedule 3 of the 2016 Act by the Respondent breaching the terms of the tenancy agreement by keeping dogs.
13. Further the Tribunal was satisfied that in the circumstances it was reasonable to evict. However the Tribunal suspended the order for two months to allow the Respondent time to move to a care home.
14. The Tribunal granted an Order to evict. 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



25 March 2024

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Legal Chair

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Date