



**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/24/0269**

**Re: Property at 11 Bearford Place, Haddington, East Lothian, EH41 4NQ (“the Property”)**

**Parties:**

**Mrs Vivian Black, Mr Robert Black, 2 ST MARTINS CLOSE, Haddington, East Lothian, EH41 4BN (“the Applicant”)**

**Miss Helena McLuckie, 11 Bearford Place, Haddington, East Lothian, EH41 4NQ (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted.**

**Background**

1. An application was lodged dated 16 January 2024 in terms of Rule 109 of the Chamber Rules for a Private Residential Tenancy Eviction Order.
2. Along with the application form the Applicant lodged the following:
  - A covering letter explaining why eviction ground is met
  - A copy Notice to Leave
  - Confirmation Notice to Leave received by tenant
  - Copy section 11 Notice to local authority
3. The Tribunal contacted the applicant on 19 February 2024 raising the following matters:

- The application seemed to name only one of the joint owners as applicant. The Tribunal enquired as to whether the second owner, Robert Black, should be added;
  - Evidence of service of Notice to Leave was required;
  - The application states that the notice to leave was served on the tenant by email. The provisions contained in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 allow service of documents and notices by electronic communications only where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner and that it may be sent to an electronic address and in an electronic form specified by the person for the purpose. A copy of the tenancy agreement was requested to enable the Tribunal to be satisfied that it was agreed with the tenant in advance that service of a notice may be made in this manner;
  - The ground upon which eviction is sought in the application form is Ground 1, namely that the Landlord intends to sell the let Property. In terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Rule 109, it is a requirement that an application for eviction is accompanied by evidence showing that the eviction ground has been met. The relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016 set out the types of evidence which might tend to show that the landlord has that intention. The Applicant was requested to provide appropriate evidence supporting the ground on which they seek to rely. In respect of ground 1 that evidence would be in the following terms: (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property or (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market;
  - Evidence was requested of the method and date on which the section 11 Notice was given to the local authority.
4. The Applicant replied on 21 February 2024 to confirm that the application should be in joint names with her husband, Robert Black. She also sent the following:
- Copy of email with Notice to Leave attached;
  - Confirmation from tenant she had received the email with the notice to leave under explanation that parties had previously used email with regards to a rent increase and WhatsApp messages were attached confirming this;
  - A copy of tenancy agreement albeit was called a short assured tenancy agreement in error.
  - Confirmation of service of section 11 Notice on local authority;
  - Copies of emails with a solicitor seeking advice on the sale of the Property.
5. The Tribunal contacted the Applicant again on 20 March 2024 seeking a full copy of the tenancy agreement and acknowledged receipt of the emails with the solicitor but requested a clear letter confirming that the solicitor will be acting for the Applicants in relation to the intended sale of the Property. The Tribunal also noted that the method of service of the Notice to Leave would be a matter for the Tribunal to consider at a case management discussion.

6. The Applicant replied on 25 March 2024 with a full copy of the tenancy agreement and a letter from the solicitor confirming they were instructed to act in the conveyance of the Property.
7. The case was accepted and scheduled for a case management discussion on 7 June 2024.
8. The Respondent was served notice of the application and details of the case management discussion. The Respondent was advised that she was required to lodge written representations by 23 May 2024. No written representations have been received.

### The Case Management Discussion

9. The case management discussion took place today by teleconference. The applicants and the respondent attended. The Tribunal raised that no written representations had been received. The Applicants advised that they needed to sell the Property to fund their retirement. This was the only rental property they owned. Mrs Black was due to take early retirement due to suffering from PTSD and her work was aware she intended to retire in November 2025 as this was the earliest date she could get her pension. The Property had always formed part of the Applicants' retirement plans. They advised that Tribunal that they could not have asked for a better tenant than the Respondent. In terms of the validity or otherwise of the service of the Notice to Leave, the applicants thought that, as the Respondent had previously agreed to receive notice of rent increases by email that this would cover service of notices by email too. When asked whether the Applicant's had obtained a Home Report or other valuation of the Property as part of their plans to sell the Tribunal was told that the Applicants' solicitor had advised them to hold off doing any of this until the eviction process was completed as the market could change. There was a letter in the papers from solicitors confirming they were instructed to act in respect of the conveyance of the Property. The Respondent advised that her position was, notwithstanding the issues with the validity of service of the Notice to Leave, that the Applicants should be entitled to sell their Property. She required assistance from the homelessness team at East Lothian Council but they refused to actively assist until she had been told she was being evicted. The Respondent lived at the Property with her 11 year old son who had additional support needs. He was settled at school and had good support there. She advised the Tribunal that any delay in the eviction order or the eviction process more generally would result in her sustaining more stress and anxiety. Her preference was for the eviction order to be granted as soon as possible so that she could get assessed for housing by the local authority. She had been looking for properties herself with no success. In respect of the Notice to Leave, the Respondent confirmed that she had received it and she felt it had been served in an adequate manner. The Applicants advised that they could be flexible and did not want to see the Respondent homeless.

## Findings in Fact

10. The Tribunal made the following findings in fact
- I. Parties entered into a private residential tenancy agreement from 1 March 2018, the Respondent having previously resided at the Property since 2013 with her partner.
  - II. Service of the Notice to Leave was carried out by email despite there having been no prior written agreement between parties that service of notices could be carried out by email.
  - III. The Notice to Leave in all other respects satisfied the legislative requirements.
  - IV. The Respondent has no objection to the order for repossession being granted but requires an eviction order to be granted in order to access assistance with rehousing from the local authority.

## Reasons for Decision

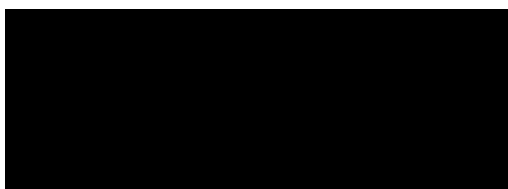
11. The Tribunal took into account all the papers and written submissions from parties along with parties' oral submissions today. It was clear that, notwithstanding the issues with validity of service of the Notice to Leave, it was reasonable for the eviction order to be granted on the basis of the parties' wishes. In particular, the Tribunal took account of the Respondent's submissions that any delay in granting the eviction order would cause her further stress and anxiety.

## Decision

12. The Tribunal decided that an order for repossession of the Property be granted.

## **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.**



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**Legal Member/Chair**

**7<sup>th</sup> June 2024**

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**Date**



