



**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) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/4094**

**Re: Property at 26 Whitehill Crescent, Carlisle, ML8 5DU (“the Property”)**

**Parties:**

**Ms Lorna McPherson, 10 Kilincadzow Road, Carlisle, ML8 4PR (“the Applicant”)**

**Ms Maureen Campbell otherwise known as Maureen Eames, 26 Whitehill Crescent, Carlisle, ML8 5DU (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction**

**Background**

1. By application dated 15<sup>th</sup> November 2023 the applicant seeks an order for eviction relying on ground 3 (landlord intends to refurbish) and ground 5 (family member intends to live in the property) in Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. The applicant lodged a signed affidavit from the applicant dated 3 November 2023 with the application.

**First case management discussion (“cmd”) – teleconference – 4<sup>th</sup> March 2024**

3. The applicant was represented by Mr Gordon, solicitor from Thorntons solicitors. The respondent was not present or represented.

4. The documents lodged by the applicant and her affidavit set out that she purchased the property by public roup from the Trustee in Sequestration of Adam Simpson on 16 January 2023 for the sum of £35,000. The date of entry was 6 March 2023.
5. The applicant was unaware who was occupying the property when she purchased the property and it was not clear from the documentation that she was aware that there was a sitting tenant. The applicant was not provided with a written tenancy agreement or any other information from the Trustee in Sequestration relating to the tenancy.
6. Mr Gordon stated that so far as his client was aware the property was in a poor state of repair and the applicant wished to install a new kitchen and bathroom.
7. The Tribunal adjourned the application to a second cmd to allow further information to be lodged. In particular the Tribunal required the applicant to provide further information verifying the identity of the tenant and occupants of the property.
8. The Tribunal also requested further evidence in respect of ground 3, refurbishment of the property to include specification of the extent of refurbishment works, why said works cannot be carried with the tenant resident in the property or otherwise explain the basis on which ground 3 is to be established.
9. The Tribunal also requested evidence from the applicant's daughter confirming that she intends to reside in the property.

**Second case management discussion (“cmd”)- 18 June 2024 – teleconference**

10. The applicant was again represented by Mr Gordon, solicitor from Thorntons solicitors. The respondent was not present or represented.
11. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the cmd in her absence. The Tribunal noted that the respondent had received correspondence from the Tribunal following the previous cmd confirming the date and time of the teleconference. The Tribunal determined to proceed with the cmd in the absence of the respondent.
12. Mr Gordon sought to amend the application to show the respondents name as Maureen Eames, which was the name she reverted to after she divorced. The

Tribunal consented to the amendment which had been properly intimated to the respondent and to which no opposition was stated.

13. Mr Gordon sought an order for eviction on both grounds. He explained that since the previous cmd he had spoken with the respondent by telephone on 18 March 2024. She had confirmed that she resided in the property and had done since 2018. She advised that she had divorced in 2003 and was now known as Maureen Eames. Mr Gordon stated that Ms Eames had initially lived with Gary Kilgour, whom she described as the lead tenant however he had moved out of the property in 2021.
14. In relation to the condition of the tenancy Mr Gordon stated that the respondent had advised that there was a flood from the dwellinghouse directly above in 2019 or 2020 and this substantially affected the bathroom of the property. He stated that the respondent also confirmed that there is a musty smell in the kitchen and food often goes mouldy.
15. Mr Gordon stated that the respondent has engaged with South Lanarkshire Council's Homeless Department or Housing Department with a view to obtaining alternative accommodation.
16. Prior to the cmd the applicant lodged an affidavit from her daughter, Niamh Douglas. The affidavit was dated 29 April 2024. In the affidavit Ms Douglas confirmed her intention to move into the property and live there for a significant period of time and that her mother had purchased the property with the intention that she would reside there.
17. Mr Gordon confirmed that no rent had been paid by the respondent since the applicant took ownership of the property.

### **Findings in fact**

18. The respondent occupies the property as tenant under a private residential tenancy which commenced in 2018.
19. The applicant purchased the property from the trustee in sequestration on 6 March 2023.
20. The applicant became the landlord of the property on 6 March 2023.
21. The applicant purchased the property with the intention that her daughter Niamh Douglas would reside in the property.

22. The respondent has not sought to defend the application and has not entered into the present process.
23. The respondent has not paid rent to the applicant since she became landlord.

**Reasons for the decision**

24. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account oral submissions at the cmd.
25. Ground 5 states:

*5 Family member intends to live in property*

(1) *It is an eviction ground that a member of the landlord's family intends to live in the let property.*

(2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

(a) *a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and*

(b) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.*

(7) *Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.*

26. The Tribunal was satisfied on the basis of the affidavits from the applicant and her daughter that Niamh Douglas intends to occupy the property as her principal home for at least 3 months.
27. The Tribunal gave weight to the fact that the respondent had not sought to defend the action. The Tribunal gave weight to the fact that the respondent had not paid rent since the property had changed ownership. The Tribunal also took into account that the respondent had spoken with Mr Gordon and confirmed that she was seeking alternative accommodation from the local authority.
28. Taking the above factors into account the Tribunal determined that it was reasonable to grant an order for eviction on ground 5.

29. Ground 3 states:

*3 Landlord intends to refurbish*

(1) *It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.*

(2) *The First-tier Tribunal may find that the eviction ground named by sub-paragraph (1) applies if—*

- (a) *the landlord intends to refurbish the let property (or any premises of which the let property forms part),*
  - (b) *the landlord is entitled to do so,*
  - (c) *it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord [, and]*
  - (d) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a) includes (for example)—*
- (a) *any planning permission which the intended refurbishment would require,*
  - (b) *a contract between the landlord and an architect or a builder which concerns the intended refurbishment.*

**30.** The Tribunal noted that the evidence presented in relation to this ground was limited to the comments made by the respondent in her telephone call to Mr Gordon on 18<sup>th</sup> March 2024 and also observations made by the applicant from the exterior of the property. No access had been gained by the applicant in order to allow an inspection to be carried out since she had purchased the property. The information provided in relation to this ground was not sufficient to establish the precise nature of the refurbishment works, the level of disruption that would be involved and whether it would be impractical for the tenant to continue to reside in the property whilst works were carried out.

**31.** In the absence of evidence relating to the above points the Tribunal determined that ground 3 had not been established.

## **Decision**

The Tribunal determined to grant an order for eviction.

## **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.**

Mary-Claire Kelly

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Legal Member/Chair

18 June 2024  
Date

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