



**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/24/0016**

**Re: Property at 32 Bellevue Gardens, Arbroath, DD11 5BG (“the Property”)**

**Parties:**

**Miss Lynn Petrie, Mr Scott Petrie, 82 Nolt Loan Road, Arbroath; 76 Bellevue Gardens, Arbroath, DD11 5BQ (“the Applicants”)**

**Mr David Spink, Mrs Victoria Spink, 32 Bellevue Gardens, Arbroath, DD11 5BG (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondents from the property.**

**Background**

1. By application dated 28 December 2023 the Applicants applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, email from Estate Agents together with other documents in support of the application.
2. By Notice of Acceptance dated 13 March 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 12 June 2024.

## **The Case Management Discussion**

4. A CMD was held by teleconference on 31 January 2024. The Applicants and the Respondent Mrs Victoria Spink attended in person.
5. The parties were in agreement that the Respondent had commenced her tenancy of the property on 15 December 2017 at a rent of £850.00 per calendar month and that the rent had not increased.
6. The Respondent confirmed that she had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 18 September 2023 and did not take any issue with the notice.
7. The Tribunal noted that the Applicants had sent a Section 11 Notice by email to Angus Council on 21 December 2023.
8. The Tribunal also noted that YOPA Estate Agents had been instructed to market the property for sale once vacant possession had been obtained.
9. Miss Petrie advised the Tribunal that due to the rent cap being in place last year it had not been possible to increase the Respondents' rent significantly and this had impacted on the Applicants ability to obtain a new mortgage over the property. Since the removal of the rent cap Miss Petrie explained the Applicants had been given one offer fixed for five years if the rent was raised to £1200.00 per month. However, Miss Petrie said that the Applicants would be unable to afford to carry out any repairs to the property once account had been taken of the other recurring annual outgoings and tax and there was also doubt as to whether the Respondents' benefit payments would meet the increased rent. For these reasons the Applicants wished to proceed with the application and sell the property.
10. For the Respondents, Mrs Spink explained that they were not actively opposing the application and just wanted to move on. Mrs Spink confirmed the Respondents had made an application to Angus Council for housing but their application would not be determined until a date for eviction had been granted. Mrs Spink confirmed that she was unable to say whether or not the Respondents benefits would meet an increase in rent to £1200.00 per month as the Respondents were currently on legacy benefits but in the course of transferring to Universal Credit and rent would shortly no longer be administered by Angus Council.
11. Mrs Spink advised the Tribunal that she and her husband had three children living at home with them aged 5, 11 and 16. She also said that two of the children suffered from ADHD and that she herself had some mental health issues. Mrs Spink advised the Tribunal that the local authority had not given her any indication as to the likely timescale for providing the family with accommodation.

12. Miss Petrie confirmed the property was the Applicants only rental property.

### **Findings in Fact**

13. The parties entered into a Private Residential Tenancy that commenced on 15 December 2017 at a rent of £850.00 per calendar month.

14. The Respondents were served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 18 September 2023.

15. Intimation of the proceedings by way of a Section 11 Notice was sent to Angus Council by email on 21 December 2023.

16. The Applicants fixed rate mortgage has expired and they are currently paying on the variable rate.

17. Although it would be possible for the Applicants to obtain a five-year fixed rate mortgage over the property it would not be economic for them to do so.

18. In order to obtain a five-year fixed rate mortgage, the rent for the property would need to increase to £1200.00 per month.

19. The Respondents are in receipt of state benefits.

20. The Respondents have three children living with them at the property aged 5, 11 and 16.

21. Two of the Respondents' children suffer from ADHD.

22. The Respondent, Mrs Spink has some mental health issues.

23. The property is the Applicants only rental property.

### **Reasons for Decision**

24. The Tribunal was satisfied from the written representations, documents and the parties' oral submissions that the parties had entered into a Private Residential tenancy that commenced on 15 December 2017. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondents under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Angus Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced that the Applicants intend to use YOPA Estate Agents to market the property for sale once they have vacant possession.

25. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had

been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicants with the needs of the Respondents in arriving at a decision.

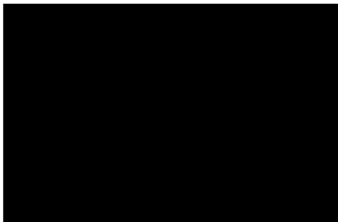
26. In reaching its decision the Tribunal noted that the Respondents were not to any material extent opposing the application and that they just wished to move on but could not do so with regards to their application to Angus Council to be rehoused until a date had been set for their eviction. The Tribunal took account of the fact that the Respondents had three children living with them at the property and that two of them suffered from ADHD. The Tribunal took the view that this would give the Respondents some priority with the local authority in providing them with suitable accommodation. The Tribunal also noted that the Respondent Mrs Spink had some mental health issues and although she did not elaborate on these this may also assist with the Respondents homeless application.
27. The Tribunal also took account of the financial pressures on the Applicants as a result of the increase in mortgage interest rates. The Tribunal noted that at the time of making the application the Applicants mortgage had increased to around £1200.00 per month well in excess of the monthly rent of £850.00. The Tribunal also accepted that the Applicants would also have to meet other outgoings over the property in respect of insurance, repairs, safety checks and taxes. The Tribunal was therefore prepared to accept that it would not be viable for the Respondents to continue without being able to remortgage. The Tribunal noted that the Applicants had received one remortgage offer subject to a rent increase to £1200.00 per month but that even then the Applicants did not think it was economically viable to continue and that they would be unable to meet the cost of any repairs should that be necessary and as the Respondents were dependent on their rent being paid from state benefits it was not known if the increased rent would be met.
28. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicants in this application were such that although there would undoubtedly be an adverse impact on the Respondents and their family it was reasonable to grant the order given the clear financial impact being experienced by the Applicants. The Tribunal would hope that the Respondents homeless application will be processed quickly by the Local Authority and that having granted an order for eviction, the Respondents would receive priority for rehousing given the needs of the family.

## **Decision**

29. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicants entitled to an order for the eviction of the Respondents from the property.

## **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.**



**Graham Harding  
Legal Member/Chair**

**16 July 2024  
Date**