



**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) 2016**

**Chamber Ref: FTS/HPC/EV/24/0990**

**Re: Property at 48 Union Grove, Top Floor Right, Aberdeen, AB10 6RX (“the Property”)**

**Parties:**

**Mr Martin Morris, 229 Great Western Road, Aberdeen, AB10 6PS (“the Applicant”)**

**Ms Olga Krawczyk, 48 Union Grove, Top Floor Right, Aberdeen, AB10 6RX (“the Respondent”)**

**Tribunal Members:**

**Rory Cowan (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an Eviction Order.**

- Background

By application dated 28 February 2024 (the Application), the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). With the Application, the Applicant, lodged the following:

- 1) Lease dated 23 September 2021;
- 2) Copy Notice to Leave dated 1 December 2023 with attachments; and
- 3) Section 11 Notice.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 7 June 2024 to be heard by way of conference call to call and the Application served on the Respondent. In advance of the CMD, the Applicant’s

representative lodged an affidavit of the Applicant confirming his intention to reside in the Property as his only or principal home.

- The Case Management Discussion

At the CMD the Applicant appeared along with a Barabara Ellis of Barbara Ellis Property Leasing. The Respondent did not appear or was represented despite intimation of the CMD date on her. Nonetheless, the Tribunal was satisfied they were aware of the date and the requirement to attend and therefore decided to proceed in her absence. On behalf of the Applicant, it was confirmed that he was seeking an eviction Order under ground 4 of schedule 3 to the 2016 Act in order to allow him to reside in the Property as his only or principal home for a period of not less than 3 months. He had been working overseas, but his employment had relocated back to Aberdeen. He had no other property in Aberdeen and has been residing with his mother since his return to Aberdeen. She lives in a 1 bedroom flat and he has been sleeping on an inflatable bed since his return. He conformed that he has 2 children who do not live with him aged 9 and 11 years, but who stay with him 2 nights per week and part of his contact arrangements. He stated things become “overcrowded” when they come to stay with him at his mother’s flat. He confirmed that he has owned the Property since 2001 and wants to live in the Property as is only or principal home. The Property is a 1 bed roomed flat which he described as being “large” which can easily accommodate his children through the addition of bunk beds or temporary beds in the living room. Mrs Ellis confirmed that the Respondent lives in the Property alone. She has no children and was described as being in her “mid to late 20s”. The Respondent has accrued rent arrears of £1,425 and has been obstructive in terms of access to the Property to carry out repairs. Mrs Ellis also stated that there has been a report of dampness within a confirmed area in the Property but that access requests are ignored or refused and there is a concern that the further damage may be caused as a result. In addition, there has been damage caused to the ceiling within the Property whereby it appears someone had been in the attic space and stepped on the ceiling from within the attic space causing a partial collapse. Attempts to contact the Respondent to gain access to assess and repair the damage have been ignored. More generally, Mrs Ellis stated that she has not been able to speak with the Respondent since February 2024 despite repeated attempts to do so. Under questioning by the Ordinary member, Mrs Ellis confirmed that she was not aware of any attempt by the Respondent to contact the local authority regarding alternative housing and that she had received no request for a reference for the Respondent.

- Findings in Fact and Law

- 1) The Applicant and Respondent entered into a Private Residential Tenancy for the Property which commenced on 26 December 2021.
- 2) The Applicant is the heritable proprietor of the Property.
- 3) By Notice to Leave dated 1 December 2023 served by way of recorded delivery post the Applicant gave notice to the Respondent of his intention to recover possession of the Property in terms of Ground 4 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 27 February 2024.
- 4) The Notice to Leave was in the prescribed format.

- 5) That the Applicant intends to reside in the Property as his only or principal home for a period of at least 3 months following the Respondent vacating same.
- 6) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 4 of Schedule 3 has been made out.
- 7) That the Respondent has accrued rent arrears of £1425 as at 7 June 2024.
- 8) That the Respondent lives at the Property on her own.
- 9) That following working overseas the Applicant's employment has relocated to Aberdeen.
- 10) That the Applicant currently resides temporarily at his mother's property.
- 11) That the Applicant's mother's property is a 1 bedroomed flat and that the Applicant currently sleeps on an inflatable bed in her living room.
- 12) That the Applicant has 2 young children aged 11 and 9 years who stay with him at his mother's property 2 nights per week.
- 13) That the Property is a large 1 bedroomed flat that can more easily accommodate the Applicant and his children.
- 14) That the Respondent has ignored and frustrated attempts by the Applicant's letting agent to access the Property to inspect same and carry out repairs.
- 15) That the Respondent has caused or allowed damage to be caused to the Property, in particular the ceiling of same.

- Reasons for Decision

The Applicant sought an Eviction Order in order that he can live in the Property as his only or principal home for a period of not less than 3 months. The Notice To Leave served on the Respondent complied with all legislative requirements and the Application was submitted in proper form. Sufficient vouching for Ground 4 of Schedule 3 of the 2016 Act has been produced with the Application and the Tribunal were satisfied that the said ground for possession had been established. The Respondent did not appear and seek to resist the Application and, as such, there was no dispute as to the underlying factual circumstances and therefore no basis for an evidential hearing. The next issue therefore for the Tribunal was to consider the question of reasonableness and whether it is reasonable to grant the eviction order as sought by the Applicant. Having considered the circumstances put before them at the CMD (as narrated above), the Tribunal was satisfied that it was reasonable to grant an eviction order. What factors weighed in favour of granting the order were that the Property had been let out by the Applicant whilst he worked abroad, but he had now returned to Aberdeen due to his work. He had no other home and was staying with his mother in a small flat and sleeping on an inflatable bed in her living room. He has young children staying with him 2 nights per week and having them stay at his mother's property in such circumstances is far from ideal. The Property, whilst a 1 bedroomed flat is more suitable to allow the Applicant to enjoy contact with his children and more suitable for them to visit the Applicant at. The Respondent is a single person who lives in the Property alone. She has accrued significant rent arrears and refuses or frustrates attempts to carry out necessary repairs to the Property. She has even caused or allowed to be caused damage to the Property which she in turn refuses or frustrates the repair of. Ultimately, the Property belongs to the Applicant, and he is entitled to use it as he wishes (subject to following due process). There was little in the circumstances of the Respondent that were before

the Tribunal that would weigh against these factors and, as such, the Tribunal decided it was reasonable to grant the order sought.

- Decision

The Tribunal resolved to grant an Eviction Order on the basis it was reasonable to do so.

### **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.**

**R. Cowan**

**Legal Member/Chair**

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