



**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/24/0392**

**Re: Property at 6 Drainie Way, Lossiemouth, Moray, IV31 6SZ (“the Property”)**

**Parties:**

**Vaughan Ralph, Flat 36A, Homefyld House, 199-207 Whitegate Drive, Blackpool, FY3 9EN (“the Applicant”)**

**Zoe Edwards, Roy Geddes, 6 Drainie Way, Lossiemouth, Moray, IV31 6SZ; 14 Golf View Crescent, New Elgin, Elgin, IV30 6JP (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

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

**Background**

1. By application dated 24 January 2024 the Applicant’s representatives, Bannatyne Kirkwood France & Co, Solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the Respondents from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of service, Pre-action letters, Section 11 Notice with proof of intimation and a rent statement in support of the application.
2. By Notice of Acceptance dated 23 February 2024 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 Respondents by Sheriff Officers on 30 April 2024.
4. By email dated 23 May 2024 the Applicant's representatives submitted an updated rent statement to the Tribunal.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 5 June 2024. The Applicant did not attend but was represented by Ms Wooley from the Applicant's representatives. The Respondents attended in person.
6. Mr Geddes advised the Tribunal that he had moved out of the property at the beginning of 2021. Ms Edwards explained that attempts had been made to have the tenancy transferred into her sole name without success but that in August 2023 it had been almost agreed that her mother would move into the property with her as a joint tenant but then her mother had been taken ill and had subsequently died. Ms Edwards suggested that she alone was responsible for the failure to pay rent.
7. Mr Geddes confirmed that he was not opposing the order sought by the Applicant and that he accepted that he remained a tenant although not living in the property.
8. The Tribunal ascertained from The Respondents that it was agreed that the tenancy had commenced on 11 December 2019 at a rent of £495.00 per calendar month and that Notices to Leave had been served by email on the Respondents on 22 November 2023. It was also agreed by Ms Edwards that Pre-action requirement emails had been sent to her by email from the Applicant's letting agents on 19 October 2023 and 8 January 2024.
9. The Tribunal noted that a Section 11 Notice had been sent by the Applicant's representatives to Moray Council by email on 24 January 2024.
10. Ms Edwards confirmed her agreement that at the date of service of the Notice to Leave there were rent arrears of £1485.00 and that these had risen to £2475.00 by the date of the application to the Tribunal and to £4455.00 at the date of the CMD. Mr Geddes did not dispute the figures.
11. Ms Edwards confirmed that she had been in contact with the Homeless Unit at Moray Council. She said that although she would like to remain in the property, she did not see how that would be possible. Ms Edwards explained that over the previous eighteen months she had experienced health issues that had resulted in her requiring emergency surgery and in addition her mother had been ill and she had been travelling up and down to Suffolk until her death. Ms Edwards explained that as a result she had time off work and had been in receipt of Universal Credit and although she may have received Housing Allowance had not been able to pay any rent. Ms Edwards confirmed she was not waiting on any back payment of rent from Universal Credit. In response to

a further query from the Tribunal Ms Edwards confirmed that she had no particular needs with regards to housing and lived alone in the property. She said the local authority had not given her any definite timescale for rehousing her but that she had been granted homeless status and had to advise the council of the Tribunal's decision and that she would be placed somewhere either in temporary or permanent accommodation.

12. For the Applicant Ms Wooley explained that the Applicant was 70 years of age and had a small portfolio of 5 rental properties which he intended to sell. Ms Wooley advised the Tribunal that the Applicant had a £70000.00 mortgage secured on the property. She confirmed that no steps had been taken to dispose of the Applicant's other properties as he was awaiting the outcome of the current proceedings. In response to a query as to the impact on the Applicant if the eviction of the Respondents were to be postponed for a period to give the local authority more time to rehouse Ms Edwards, Ms Wooley expressed concern that the rent arrears which were already substantial would continue to rise.
13. Ms Edwards advised the Tribunal that she was back in employment and was paid weekly and had a take home pay of £459.00 per week. She did not say how much in addition to her monthly rent she would be able to pay towards the arrears but hoped that it would not take years to clear the debt.
14. For the Applicant Ms Wooley confirmed that the Applicant still wished an order for eviction.

### **Findings in Fact**

15. The parties entered into a Private Residential Tenancy that commenced on 11 December 2019 at a rent of £495.00 per calendar month.
16. The Second Respondent, Mr Roy Geddes moved out of the property at the beginning of 2021.
17. Attempts to transfer the tenancy into the sole name of the First Respondent, Ms Zoe Edwards were unsuccessful.
18. The Respondents accrued rent arrears from June 2023 and have remained in arrears since that time.
19. Notices to Leave were served on the Respondents by email on 22 November 2023 under Ground 12 of Schedule 3 of the £2016 Act.
20. At the time of service of the Notices to Leave the Respondents owed rent of £1485.00.
21. Pre-action Requirement emails were sent to the Respondents by emails by the Applicant's letting Agents, Belvoir Lettings on 19 October 2023 and 8 January 2024.

22. A Section 11 notice was sent by email to Moray Council by the Applicant's representatives by email on 24 January 2024.
23. At the date of the CMD the Respondents owed rent of £4455.00.
24. The Second Respondent does not oppose the application.
25. The First Respondent has sought assistance from the Homeless Unit at Moray Council and has been given Homeless status.
26. The First Respondent has been advised by Moray Council that if an order for eviction is made she will be provided with either temporary or permanent accommodation but no timescale for this has been given to her.
27. The First Respondent lives alone in the property and has no special housing needs.
28. The First Respondent is not waiting on any back payments of Universal Credit. The First Respondent is in employment with a net income of £459.00 per week.
29. The Applicant is 70 years of age and has a small portfolio of five rental properties that he wishes to sell.
30. The Applicant has a mortgage of £70000.00 secured over the property.

### **Reasons for Decision**

31. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions from Ms Wooley and the Respondents that the parties entered into a Private Residential tenancy that commenced on 11 December 2019 at a rent of £495.00 per Calendar month. The Tribunal was also satisfied that although Mr Geddes moved out of the property at the beginning of 2021 the tenancy remained in joint names. The Tribunal was satisfied that valid Notices to Leave had been served on the Respondents under Ground 12 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Moray Council. The Tribunal was also satisfied that the pre-action requirements had been met with emails being sent to the Respondents by the Applicant's letting agents.
32. The Tribunal in reaching a decision on whether it was reasonable to grant an order for the eviction of the Respondents from the property took account of the circumstances of all of the parties. The Applicant was at an age where he wished to dispose of his portfolio of properties and there was a substantial mortgage secured over the property that he had to service whilst at the same time the Respondents were not paying any rent and had not done so for nine months.

33. The Tribunal also took account of the fact that the Second Respondent did not wish to oppose the order being granted given that he was not living in the property and had not done so for some three years but remained liable for the rent.
34. With regards to the First Respondent the Tribunal acknowledged that she had experienced a difficult time over the previous eighteen months as a result of her own health issues and that of her late mother. Nevertheless despite being in receipt of Universal Credit and at times being in employment the First Respondent had failed to make any payment of rent and had allowed the arrears to increase substantially to the extent they now amounted to £4455.00. The Tribunal also took account of the fact that the First Respondent had been given homeless status by the local authority and would if evicted be found accommodation.
35. Taking everything into account the Tribunal was satisfied in the circumstances that it was reasonable to grant an order for eviction but that in order to give the local authority some additional time to provide the First Respondent with suitable accommodation enforcement of the order would be postponed for a period of six weeks until 19 July 2024.

### **Decision**

36. The Tribunal being satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing determined that the Applicant was 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**

**5 June 2024  
Date**