



**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/23/4680**

**Re: Property at 43 Arran Avenue, Port Glasgow, PA14 6AP (“the Property”)**

**Parties:**

**Mr Michael Coll, 60 Arran Avenue, Port Glasgow, PA14 6AP (“the Applicant”)**

**Mr Craig Emmerson, 43 Arran Avenue, Port Glasgow, PA14 6AP (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 43 Arran Avenue, Port Glasgow, PA14 6AP under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.**

**Background**

- 1. This is an application for an order of repossession of the Property. an order in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The basis of the Application was that the Applicant required to repossess the Property to**

enable his daughter and granddaughter to live in the property under Ground 5 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 17 March 2023 between the parties, an undated and unsigned Notice to Leave and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Inverclyde Council dated 17 December 2023.
3. After further enquiries by the Tribunal the Applicant's solicitor submitted two statements from the Applicant dated 16 February 2024 and 2 April 2024.
4. On 24 April 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
5. On 5 June 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 9 July 2024. The Respondent required to lodge written submissions by 26 June 2024. This paperwork was served on the Respondent by Chelsea Murray, Sheriff Officer, Glasgow on 7 June 2024 and the Execution of Service was received by the Tribunal administration.

### **Case Management Discussion**

6. The Tribunal proceeded with the CMD on 9 July by way of teleconference. Ms Ahmed from Neill Clerk and Murray solicitors appeared for the Applicant. Mr Emmerson appeared on his own behalf.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 17 March 2023 between the parties, the undated and unsigned Notice to Leave and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Inverclyde Council dated 17 December 2023 and the two statements from the Applicant dated 16 February and 2 April 2024. The Tribunal noted the terms of these documents.
8. Ms Ahmed moved the Tribunal to grant an Order for repossession. She submitted the Notice to Leave had been served by hand on the Respondent by the Applicant and witnessed by his wife on 29 July 2023. In terms of that Notice to Leave the Applicant was entitled to raise proceedings from 21 October 2023. There had been discussions between the parties that the Respondent would leave the Property as he understood the Applicant needed the Property for his daughter and granddaughter to live in as they were living in poor living conditions. However the Respondent had reneged on that. Tribunal proceedings were delayed giving the Respondent further time to move out.

9. Mr Emmerson explained that the Applicant had originally handed him a letter on 11 July 2023 confirming he had served notice on 10 July 2023. On 10 July 2023 the Applicant had given him a small handwritten piece of paper giving him three months to leave the Property. Mr Emmerson had texted the Applicant stating he needed a Notice to Leave in the proper legal form so he could present it to the local Council which would then enable him to seek housing with them. He did not receive the Notice to Leave until 28 July 2023.
10. The Respondent went onto explain that he had been offered a tenancy with Riverclyde Homes on 9 May 2024. He lived with his partner and son aged 20. However repairs to fix a water leak in the roof were needed and they could not move in until the repairs were complete. He was in contact with the Riverclyde Homes on a weekly basis. The Property was a two bedroomed house, the same size as the Property.
11. The Tribunal adjourned to consider matters. After the adjournment the Tribunal advised parties they were inclined to grant the Order but that it would be suspended for a period of two months to allow the repairs to be carried out. The Tribunal made further enquires with parties as to what their position would in those circumstances.
12. Ms Ahmed advised that her client would be opposed to that as the Respondent had been given more time to find alternative accommodation. The concern from her client's point of view was that the Respondent may not move out after two months. The Tribunal explained the Order would be effective at that stage and that accordingly the Applicant could enforce it if the Respondent did not move..
13. Mr Emmerson submitted that he would like any Order to be suspended for a period of 12 weeks which would give Riverclyde Homes time to carry our repairs.
14. Ms Ahmed opposed the Order being suspended for 12 weeks but stated that an Order suspended for two months would be acceptable.
15. The Tribunal adjourned shortly to discuss matters. After the adjournment the Tribunal enquired of Mr Emmerson when the last time was that he had spoken to Riverclyde Homes. He explained he had last spoken to them the week before. They used in house and external contractors. They had been unable to give a timescale. They wanted to be kept advised as to the outcome of the CMD as that may assist in them prioritising the repairs.

## **Reasons for Decision**

16. The Tribunal considered the issues set out in the application together with the documents lodged in support.
17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 5, namely that a family member intends to live in the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave setting out an eviction ground applied stated in the Notice to Leave accompanying the application.
19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to allow his daughter and granddaughter to move into the Property at Part 2 of the Notice in terms of Ground 5 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2).
20. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Respondent stated the Notice to Leave was served on the Respondent by hand on 28 July 2023. The Tribunal is accordingly satisfied the Notice to Leave was validly served on 28 July 2023.
21. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 21 October 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 84 days. Accordingly, the Notice to Leave complies with Section 62.
22. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely Ground 5.
23. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by both parties. It was clear to the Tribunal that the

Respondent appreciated the Applicant needed the Property for his own family. It was also clear to the Tribunal that the Respondent had sensibly applied for rehousing. The Respondent had been offered suitable alternative accommodation by Riverclyde Homes but had not been able to move due to outstanding roof repairs. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established and was satisfied the Applicant intended to allow his daughter and grand-daughter, who were living in unsatisfactory living conditions, to move into the Property as soon as he regained possession.

24. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal is satisfied that the Applicant's intention was to allow his daughter and grand daughter to move into the Property when he obtained possession. The Respondent was clearly intending to move out as soon as he could and had clearly taken advice on his situation. The Tribunal formed the opinion that the roof repairs would be potentially difficult for Riverclyde Homes to remedy and accordingly was of the opinion that extra time should be given to allow the Respondent and his family time to move out without the formal process of eviction. The Tribunal considered that the Applicant would not be prejudiced by the Order being suspended by two months which effectively gave an extra 30 days to the Respondent in the hope the repairs could be carried out before the Order could be used by the Applicant. If not, the Applicant could then use the Order. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order suspended for two months.

25. In the circumstances the Tribunal consider that in terms of Ground 5 of Schedule 3 it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

26. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

Shirley Evans

**Legal Chair**

**Date 9 July 2024**