



**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/24/0617**

**Re: Property at 18 Camelon Crescent, Blantyre, G72 0BB (“the Property”)**

**Parties:**

**Mrs Khalida Saddiq, 59 Magnolia Drive, Glasgow, G72 7NP (“the Applicant”)**

**Mr Adam Carruthers, Miss Kelly Martin, 18 Camelon Crescent, Blantyre, G72 0BB (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)**

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

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

**Background**

- 1 By application to the Tribunal dated 7 February 2024 the Applicant sought an eviction order against the Respondents under ground 5 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016.
- 2 In support of the application the Applicant provided:-
  - (i) Private Residential Tenancy Agreement between the parties dated 20 April 2018;
  - (ii) Notice to Leave dated 24 October 2023 citing ground 5 and stating that proceedings would not be raised any earlier than 19 January 2024 together with certificate of service by Sheriff Officers;
  - (iii) Notice under section 11 to South Lanarkshire Council together with covering email; and
  - (iv) Affidavit by Rustam Jahangir Saddiq dated 7<sup>th</sup> February 2024.

- 3 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President agreed that there were no grounds to reject the application. A case management discussion was therefore assigned and a copy of the application paperwork, together with notification of the date and time of the Case Management Discussion, was served on the Respondent by Sheriff Officers.
- 4 On 3 July 2024 the Tribunal received an email from the Respondent, Kelly Martin. She confirmed receipt of the application paperwork and stated that the Respondents had nothing to dispute in terms of the application. She advised that they were awaiting the eviction order so as to obtain temporary accommodation from the local authority. She was unsure as to whether she would be able to join the Case Management Discussion due to a prior commitment and Mr Carruthers was working that day. She noted that the Tribunal notification indicated that the Respondents were required to take part, but went on to say that their absence would not stop a decision being made. She asked for advice on that point. The Tribunal responded to Ms Martin, stating that it would be in the Respondents' best interests to attend the Case Management Discussion, as a decision could be made in their absence. The Tribunal advised that any written representations made by the Respondents would be taken into account, in the event that they did not attend. The Tribunal asked Ms Martin to clarify if she was seeking a postponement of the Case Management Discussion. Ms Martin responded by email dated 8 July 2024 to confirm that the Respondents were not seeking a postponement, and "*the sooner the better for us so that council can find us temporary accommodation*". She reiterated that the Respondents were not disputing the terms of the application and were simply awaiting the final eviction date.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place by teleconference. The Applicant was represented by Ms Saddiq. Ms Kelly Martin was in attendance. She confirmed that she was appearing on behalf of both herself and Mr Carruthers. The Tribunal asked both parties to address it on their respective positions regarding the application.
- 6 Ms Saddiq advised that the notice to leave was issued on 24<sup>th</sup> October 2023 by Sheriff Officers. The notice proceeded on ground 5, on the basis that the Applicant's son wished to move into the property. Ms Saddiq confirmed that the Applicant's son had recently married. He and his wife were currently living with the Applicant and his father at his parent's address, however Ms Saddiq understood that there had been a communication breakdown between the Applicant and her son's wife which had made life difficult. The Applicant had agreed with her son that it would be best for him to live in the property. Ms Saddiq made reference to the affidavit from the Applicant's son that had been lodged with the application which outlined the circumstances in more detail. Ms Saddiq confirmed that the Applicant did not have any other properties available. Her son was unable to get a mortgage as he was not in a financial position to do so. He would be moving into the property as a permanent home for himself and his wife. Ms Saddiq confirmed that she was therefore asking the Tribunal to

make an eviction order. She noted the representations from the Respondents and highlighted that the eviction order would likely assist them in obtaining alternative accommodation.

- 7 Ms Martin confirmed that the Respondents were not opposing the application. They required the eviction date in order to obtain accommodation from the local authority. Ms Martin confirmed that she and Mr Carruthers resided in the property with their two children.

## **Applicable Legislation**

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”), as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **51 First-tier Tribunal’s power to issue an eviction order**

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

## **52 Applications for eviction orders and consideration of them**

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) *subsection (3), or*

(b) *any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) *is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

(b) *has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

(a) *begins on the day the tenant receives the notice to leave from the landlord, and*

(b) *in the case of a notice served before 3 October 2020 expires on the day falling—*

(i) *28 days after it begins if subsection (3) applies,*

(ii) *three months after it begins if subsection (3A) applies,*

(iii) *six months after it begins if neither subsection (3) nor (3A) applies.*

(c) *in the case of a notice served on or after 3 October 2020, expires on the day falling—*

(i) *28 days after it begins if subsection (3B) applies,*

(ii) *three months after it begins if subsection (3C) applies,*

(iii) *six months after it begins if neither subsection (3B) nor (3C) applies*

(3) *This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

(3A) *This subsection applies if—*

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (i) that the landlord intends to live in the let property, [ground 4]
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]
- (iii) that the tenant has a relevant conviction, [ground 13]
- (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]
- (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]
- (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]
- (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

- (i) the eviction ground mentioned in subsection (3), and
- (ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]
- (b) that the tenant has a relevant conviction, [ground 13]
- (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]
- (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (i) that the landlord intends to live in the let property, [ground 4]
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]
- (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]
- (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

- (i) an eviction ground, or grounds, mentioned in subsection (3B), and

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

### **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

### **Schedule 3, Part 5**

*(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.*

*(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—*

*(a) the family member is incapable of having, or expressing, that intention, and*

*(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.*

*(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—*

*(a) in a qualifying relationship with the landlord,*

*(b) a qualifying relative of the landlord,*

*(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or*

*(d) in a qualifying relationship with a qualifying relative of the landlord.*

*(5) For the purposes of sub-paragraph (4)—*

*(a) two people are in a qualifying relationship with one another if they are—*

*(i) married to each other,*

*(ii) in a civil partnership with each other, or*

*(iii) living together as though they were married,*

*(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,*

*(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,*

*(d) a person's stepchild is to be regarded as the person's child,*

*(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.*

*(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.*

*(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.*

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received after 28 October 2022.

## **Findings in Fact**

- 9 The parties entered into a private residential tenancy agreement which commenced on 20 April 2018.
- 10 On 24<sup>th</sup> October 2023 the Respondent was served with a Notice to Leave by Sheriff Officers. Said Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It cited ground 5 of schedule 3 of the 2016 Act and confirmed that proceedings for possession would not be raised any earlier than 19 January 2024.
- 11 Mr Rustam Jahangir Saddiq is the son of the Applicant.
- 12 Mr Saddiq and his wife currently reside with the Applicant and his father Jahangir Saddiq. The relationship between the Applicant and Mr Saddiq's wife has become strained.
- 13 Mr Saddiq intends to move into the property with his wife, and occupy the property for at least three months. Mr Saddiq's intention is that the property will be his permanent marital home.
- 14 Mr Saddiq is not in a financial position to obtain a mortgage in order to purchase another property.
- 15 The property at 18 Camelon Crescent, Blantyre is the only property owned and let by the Applicant.
- 16 The Respondents reside in the property with their two children.
- 17 The Respondents do not dispute the terms of the application. The Respondents have sought assistance from the local authority and are awaiting rehousing. The Respondents will be offered temporary accommodation by the local authority upon the granting of an eviction order.

## **Reasons for Decision**

- 18 In reaching its decision, the Tribunal took into account the application paperwork, written representations from the parties and the submissions at the Case Management Discussion. The Tribunal determined that it had sufficient information upon which to make a decision at the Case Management Discussion, and that it would not be prejudicial to the parties to do so.
- 19 The Tribunal was satisfied that the Applicant had served a Notice to Leave upon the Respondent on 24<sup>th</sup> October 2023 which complied with the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The Tribunal was therefore able to entertain the application before it under section 52 of the 2016 Act.



- 20 The Applicant sought an eviction order under ground 5 of Schedule 3 of the 2016 Act. Having considered the affidavit from Mr Saddiq, the Tribunal was satisfied that he was a qualifying relative, being the son of the Applicant, that he intended to move into the property with his wife, and that this would be on a long term basis in excess of three months. There was nothing before the Tribunal to contradict the account of Mr Saddiq in this regard and the Tribunal found his evidence to be credible.
- 21 The Tribunal therefore considered the reasonableness of making an eviction order and the relevant factors in this case. The Tribunal gave significant weight to the fact that the Respondents were not opposing the application. Indeed they were keen for an eviction order to be granted to enable them to obtain alternative accommodation with the local authority. With regard to the Applicant's position, the Tribunal found it credible that the Applicant would wish to have her son residing in the property that she owned, and that her son had a need for accommodation following the breakdown in relations between the Applicant and his wife. The Tribunal noted that she was not a professional landlord, in that this was the only property that she owned and let. Whilst the Tribunal would ordinarily have concerns over the reasonableness of granting an eviction order where there are children in the household, it was clear that the Respondents were awaiting the eviction order to facilitate their move into local authority housing. There was nothing before the Tribunal to persuade it that the granting of an eviction order would be unreasonable in this case.
- 22 Accordingly having weighed all relevant factors in this case the Tribunal ultimately concluded that it would therefore be reasonable to make an eviction order.
- 23 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.**

Ruth O'Hare

**2 August 2024**

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**Legal Member/Chair**

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**Date**