



**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**

Reference number: FTS/HPC/EV/24/0297

Order granted on 8 July 2024.

**Re: Property at 171/3 Crewe Road West, Edinburgh EH5 2PF (“the Property”)**

**Parties:**

**Douglas Morris Peace and Joanne Peace, residing together at 13 Forthview Road, Edinburgh, EH4 2DE (“the Applicants”)**

**Tracy Hoy or Dhakal residing at 171/3 Crewe Road West, Edinburgh EH5 2PF (“the Respondent”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)  
Ahsan Khan (Ordinary member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order against the respondent for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 12A of schedule 3 to the 2016 Act.**

**Background**

1. The Applicants sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicants lodged with the Tribunal Form E dated 17/01/2024. The documents produced were a Tenancy Agreement; a notice to leave served on 21/08/2023, a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 and a schedule of unpaid rental. A copy title sheet was lodged with the Tribunal which showed that the applicants are the heritable proprietors of the Property.

2. By interlocutor dated 13/03/2024, the application was referred to this tribunal. On 03/06/2024 the First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations. No further representations were received.

### **Case Management Discussion**

3. A case management discussion took place by telephone conference at 2.00pm on 8 July 2024. Both applicants were present but unrepresented. The respondent was neither present nor represented. The case file discloses that the respondent has had timeous intimation of the date, time, and method of joining the hearing. No application is made for an adjournment. We can justly determine this case in absence of the respondent.

### **Findings in Fact**

4. The Tribunal made the following findings in fact:

(i) The Applicants and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 11/09/2020.

(ii) The rent in terms of the Tenancy Agreement was £822.00 per month.

(iii) Since September 2023 the respondent had not paid the full monthly rental. Each month, there has been a shortfall of £185.08. At the date of application and at today's date the respondent has been in arrears of rent for more than three consecutive months.

(iv) Title to the property rests in the joint names of the applicants, who are in their 70s. The property is burdened with a mortgage. There are now rent arrears of £1,230.08.

(v) The respondent remains in the property, where she lives alone. The property has two bedrooms. Until September 2023 the respondent's daughter lived with her in the property. When the respondent's daughter moved out, the respondent's entitlement to housing benefit reduced, and that created the shortfall in monthly rental payments. Even though the respondent occupies a two bedroomed property, she is only now entitled to housing benefit for the equivalent rental of a one bedroomed property.

(vi) A mortgage is secured over the property. The term of the mortgage is up and must now be paid back to the heritable creditor. The applicants have no other means to repay the mortgage and must sell the property to prevent repossession of the property by the heritable creditor. The applicants cannot secure another mortgage over the property because of their age.

(vii) In December 2023 the applicants instructed McDougall McQueen, solicitors and Estate Agents, to market the property for sale.

(viii) The respondent does not resist the application for repossession.

(ix) On 21/08/2023 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. A section 11 notice was served on both the respondent and the local authority by the applicant. On 05/09/2023, the applicants submitted an application to the tribunal.

### **Reasons for the Decision**

5. The Applicants seek recovery of possession of the Property in terms of Grounds 1 and 12 of schedule 3 to the 2016 Act. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

6. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in terms of Grounds 1 and 12 of schedule 3 to the 2016 Act are established. The respondent offers no resistance to the application. For these reasons, the Tribunal determined to grant an Order for possession.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property against the respondent in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Grounds 1 and 12 of schedule 3 to the 2016 Act.

### **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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

*Paul Doyle*  
Legal Member

8 July 2024