



**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/24/1607**

**Re: Property at 275B North High Street, Musselburgh, EH21 6BQ (“the Property”)**

**Parties:**

**Murray Lynch Gillan, 19 Brunstane Drive, Edinburgh, EH15 2NF (“the Applicant”)**

**Claire Lynch, 275B North High Street, Musselburgh, EH21 6BQ (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 1 December 2019. The application was dated 9 April 2024 and lodged with the Tribunal on or shortly after that date.
2. The application relied upon a Notice to Leave dated 13 December 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by Sheriff Officer on that date, as permitted by the terms of the Tenancy Agreement. The Notice relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act, being that “Your Landlord intends to live in the Let Property”. The Notice provided no further information on the basis for the Applicant’s eviction other than to state that the “landlord requires

possession of the property and intends to occupy same as his only or principal home for at least three months". The Notice intimated that an application to the Tribunal would not be made before 7 March 2024.

3. The application papers included an affidavit by the Applicant dated 26 March 2024 including the following information:
  - a. The Applicant previously resided in London but returned to Edinburgh to work.
  - b. He was a 59 and was self-employed as a joiner/shop fitter.
  - c. Since May 2023, he has been living with his elderly mother and step-father. He is currently sleeping on a couch in their home.
  - d. He is incurring ongoing storage costs for his possessions.
  - e. He had always intended to return to live at the Property at some point.
  - f. He now wished to live at the Property, and for his two children (aged 15 and 17) to live with him. His children wished to live with him there.
  - g. He had no other property available to him, owned no other property, and had a mortgage over the Property and therefore could not afford to purchase another property.
4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Lothian Council on 9 April 2024 was provided with the application.

### **The Hearing**

5. The matter called for a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 13 August 2024 at 11:30. We were addressed by the Applicant's agent, Simone Callaghan, paralegal, TC Young. The Respondent represented herself.
6. At the CMD, the Applicant's agent confirmed that the application for eviction was still insisted upon and that the circumstances set out in the affidavit remained accurate, but with the additional information that the Applicant's children now required to live with him (rather than it simply being a choice) due to changes in family circumstances. The Applicant's agent did not have full information on these family circumstances but provided some additional information which, given that the issues are not material to our determination, we do not record in this Decision.
7. The Respondent confirmed that she had no opposition to the order sought. She had a support worker in the housing department of East Lothian Council who was looking to assist her with rehousing and avoiding homelessness. She had, however, been told that she would not be rehoused prior to an order for eviction being granted against her. In the interim, she said that she had sought private housing but had not found suitable accommodation. She believed that the combination of her financial circumstances, her requirements for a property (due to being disabled), and her having a pet meant there were no properties

which were both suitable for her and for which the landlord would accept her as a tenant. She was thus reliant on obtaining public sector housing. The Respondent did not have a clear timescale for being rehoused, and was concerned that she may require to move into temporary public accommodation in the interim (but she accepted that this may occur). No suspension of the order for eviction was sought.

8. Following submissions, we noted that the Respondent did not dispute any part of the Applicant's submissions or affidavit and accepted the Applicant's reasons for seeking to move back into the Property.
9. We noted the following points regarding the Respondent that may be relevant to reasonableness (none of which the Applicant disputed):
  - a. The Respondent lived with her 19 year old daughter at the Property.
  - b. The Property was a two-bedroom ground floor property.
  - c. It was not adapted for the Respondent's use, but the Respondent had purchased her own portable assistive technology (such as a shower chair) which she would be taking with her to any new property.
  - d. The Respondent was on benefit at a level sufficient to cover rent but it was insufficient for her to build up savings to a level sufficient to satisfy the financial requirements of most private sector landlords.
  - e. The Respondent had a partner who did not live with her, but the partner did provide assistance to her at times.
  - f. The Respondent provided care to her daughter due to her daughter's own health issues.
  - g. The Property's location and nature was very suitable for the Respondent, being ground floor and close to shops and her GP. The Respondent was looking for a similar property elsewhere.
  - h. The Respondent was not in arrears.
10. No motion was made for expenses.

### **Findings in Fact**

11. On or around 1 December 2019 the Applicant let the Property as a Private Residential Tenancy to the Respondent with commencement on 1 December 2019 ("the Tenancy").
12. On 13 December 2023, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to live in the Property.
13. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 7 March 2024.
14. A Sheriff Officer instructed on behalf of the Applicant served a copy of the Notice to Leave on the Respondent on 13 December 2023.

15. Clause 4 of the Tenancy Agreement permits for service of notices by personal service.
16. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 4 of Schedule 3 Part 1 of the 2016 Act on or around 9 April 2024.
17. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Lothian Council by the Applicant on or about 9 April 2024.
18. The Respondent is disabled and relies on benefits.
19. The Respondent has a 19 year old daughter, for whom she acts as a carer.
20. The Property is not specially adapted for the use of the Respondent.
21. The Property is suitable for the Respondent by reason of its location (and the proximity to shops and her doctor) and by reason of it being easily accessible (due to being a ground floor property).
22. The Applicant owns no other property other than the Property.
23. The Applicant is currently living with his mother and step-father, sleeping on a couch, having returned to the Edinburgh area after a period living in London.
24. The Applicant has a 15 year old and a 17 year old child, both of whom require to live with him due to a change of circumstances.
25. The Applicant is currently incurring storage costs for some of his belongings due to not having a suitable permanent address in which to store them.
26. The Applicant wishes to reoccupy the Property as his home, due to his personal accommodation circumstances and his desire to have his children live with him.

### **Reasons for Decision**

27. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers, and in consideration of the Respondent's lack of any objection, that the Notice to Leave had been correctly drafted and served upon the Respondent.
28. Ground 4 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

- (1) *It is an eviction ground that the landlord 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) *the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months,*
  - (b) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.*
- ...
- (4) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.*

29. The affidavit, augmented by the submissions at the CMD, clearly showed that paragraphs 1 and 2(a) of Ground 4 were satisfied. The Respondent took no objection to the Applicant's position, his desire to move back into the Property, nor the reasons he provided for seeking this. Ground 4 is satisfied subject to paragraph 2(b) regarding reasonableness.
30. We require, in terms of the Act as currently amended, to consider the reasonableness of the application. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given his personal housing situation, and his desire to set up a family home for himself and his two children in the Property. Though granting the order was placing the Respondent and her daughter at risk of homelessness, the Respondent was not opposing eviction in the hope of being allocated suitable public sector housing. Even considering the Respondent's compelling personal circumstances, we were satisfied that it is reasonable to evict on the basis of the information before us.
31. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 4 in normal terms.

## Decision

32. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 4 of Schedule 3 of that 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.

# Joel Conn

13 August 2024

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Legal Member/Chair