



**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/24/2213**

**Re: Property at 119 Marmion Drive, Glenrothes, Fife, KY6 2PQ (“the Property”)**

**Parties:**

**Colin Marsden, Heather Diana Compton Marsden, 19 Viewforth, Markinch, Glenrothes, Fife, KY7 6NY (“the Applicants”)**

**David Colgrave, Denise Louise Colgrave, 119 Marmion Drive, Glenrothes, Fife, KY6 2PQ (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondent from the property but that enforcement of the order should be suspended for a period of three months.**

**Background**

1. By application dated 13 May 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 in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants representatives submitted a copy of a tenancy agreement, Notice to Leave, Rent Statement, Instruction to sell and a Section 11 Notice together with other documents in support of the application.

2. By Notice of Acceptance dated 29 May 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 12 September 2024.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 16 October 2024. The Applicants did not attend but were represented by Miss Wooley from the Applicants’ representatives and the Respondents attended in person.
5. The parties were in agreement that the Respondents had commenced their tenancy of the property on 22 June 2022.
6. The Respondents confirmed that they had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 18 October 2023 that provided that the Applicant would not raise proceedings for her eviction before 13 January 2024.
7. Miss Wooley confirmed that she had sent a Section 11 Notice by email to Fife Council on 13 May 2024.
8. The Tribunal noted that Your Move had been instructed to market the property for sale once vacant possession had been obtained.
9. Ms Wooley explained that the Applicants were approaching retirement and wished to dispose of their two let properties and realise their capital to help fund their retirement.
10. For the Respondents Mr Colgrave said that the Respondents were not opposing the application but that both he and his wife worked in Glenrothes and although he worked full time as a bus driver and his wife worked part time for Fife Council they could not afford the rent of another private rental property. Mr Colgrave went on to say that the Respondents had approached the Local Authority for accommodation but had been told they would not be given assistance until an eviction order was granted. Mr Colgrave also advised the Tribunal that the Respondents had two children aged 16 and 2 living with them and that their 16-year-old was attending college in Glenrothes. Mr Colgrave also said that the Council had told him that the family would only be provided with temporary accommodation as there was a shortage of three-bedroom properties in the area. The Tribunal was also told that it would not be easy for the Respondents to move elsewhere due to work and family commitments. The Respondents also confirmed that they had applied for both local authority and Housing Association properties but had not been given any timescale for being rehoused.

11. For the Applicant Miss Wooley commented that it was not uncommon for local authorities to wait until an order for eviction had been granted before stepping in and therefore it may assist the Respondents to grant the order sought. Miss Wooley also said that the Applicants had a mortgage over the property and that it would benefit the Applicants to pay it off from the sale of the property although she was unable to provide the Tribunal with any financial information in this regard.

### **Findings in Fact**

12. The Respondent commenced a Private Residential Tenancy of the property on 22 June 2022.

13. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 18 October 2023.

14. A Section 11 Notice was sent to Fife Council on 13 May 2024.

15. The Applicant has instructed Your Move to market the property for sale.

16. The Applicants are approaching retirement and wish to sell their rental properties to raise capital.

17. The Respondents live in the property with their two children aged 2 and 16.

18. The Respondents' son attends the local college.

19. The Respondents are in employment in the area.

20. Although in employment the Respondents cannot afford to pay the market rent for a private three-bedroom property in the local area.

21. The Respondents have been told that they will not receive any priority to be rehoused by the local authority unless and until an order for her eviction is granted.

22. There is a shortage of local authority and housing association three-bedroom properties in the area.

23. If evicted the Respondents may be placed in temporary accommodation.

### **Reasons for Decision**

24. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 22 June 2022. The Tribunal was also satisfied that a valid Notice to Leave had been served on the

Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Fife Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and Miss Wooley's oral submissions that the Applicants intends to use Your Move to market the property for sale once they have obtained vacant possession.

25. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondents from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicants with the needs of the Respondents in arriving at a decision. On the one hand there were the Applicants who due to their advancing years wished to retire from the rental market and realise the equity in their properties. On the other hand, the Tribunal also had to take account of the needs of the Respondents who had to care for their two children including their 16-year-old son who was attending the local college. The Tribunal also took into account the fact that the Respondents had been told that they would only be given priority for housing if an order for eviction was granted.

26. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicants in this application were such that although there would undoubtedly be an adverse impact on the Respondents and their children it was reasonable to grant the order. However, in order to try to reduce the impact upon the Respondents and to give the local authority some time to find the Respondents suitable accommodation the Tribunal determined to suspend the order coming into effect for a period of three months.

### **Decision**

27. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property suspended for a period of three months from the date of the decision.

### **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

**Graham Harding  
Legal Member/Chair**

**16 October 2024  
Date**