



**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/24/2854

Re: Property at 5 Pentland Terrace, Dunfermline, Fife, KY11 4RS (“the Property”)

Parties:

**Mrs Kathrin Wordie, Mr Brian Wordie, 2/3 Wishaw Terrace, Edinburgh, EH7 6AF
 (“the Applicants”)**

**Mr John Smith, Mrs Erica Smith, 5 Pentland Terrace, Dunfermline, Fife, KY11
 4RS (“the Respondents”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on ground 4 (landlord intends to live in the property) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal determines that the order shall not be executed prior to 12 noon on 6 January 2025.

Background

1. By application dated 21 June 2024 the applicant seeks an order for possession relying on ground 4 (landlord intends to live in property) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The following documents were lodged with the application:
 - Copy tenancy agreement
 - Section 11 notice with proof of intimation
 - Notices to leave and proof of service

- Affidavit signed by both applicants.

Case management discussion (“cmd”) – 26 November 2024 – teleconference

3. All parties were in attendance. Ms Wordie confirmed that the applicants sought an order for eviction relying on ground 4 as the applicants wished to return to the property to reside in it as their principal residence. Ms Smith stated that the application was not opposed. She explained that the respondents had not yet secured alternative accommodation however, they did not seek to defend the application.
4. Ms Wordie explained that the applicants had resided in the property for a year before moving to England in 2007. She stated that the applicants had recently returned to Scotland and were living in a property in Edinburgh which had also previously been rented out. That property required works to be carried out to make it ready for sale. Ms Wordie stated that the applicants’ intention is that they will live in the property at 5 Pentland Terrace permanently. Ms Wordie explained that her husband had retired and she was not presently working. Mr Wordie stated that the property 5 Pentland Terrace was ground floor and had a garden. The applicants stated that the property did not have an outstanding mortgage and as part of their financial reorganisation following Mr Wordie’s retirement they sought to return there as a permanent base.
5. Ms Smith stated that the respondents had 3 children. She explained that she is employed as an administrator in the NHS. Mr Smith is employed as a delivery driver. She stated that they had been looking for alternative accommodation and had sought advice. She stated that there was a shortage of suitable affordable accommodation in the local area. She stated that the respondents wished to stay in the same area so that their children’s education would not be disrupted. She did not dispute the information provided by the applicants in relation to their intention to return to the property or seek to defend the application.

Findings in fact and law

6. Parties entered into a private residential tenancy agreement with a commencement date of 1 August 2020.
7. The applicants are the joint owners of the property.
8. The applicants intend to return to reside in the property as their permanent home.
9. The respondents reside in the property with their 3 children.
10. The respondents are both in employment.
11. The respondents are actively seeking alternative accommodation.
12. It is reasonable to grant an order for eviction.

Reasons for the decision

13. Ground 4 states:

4(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, and*
- (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.*

(3) References to the landlord in this paragraph—

- (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,*
- (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.*

(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.

14. The Tribunal took into account the written representations and documents lodged together with oral representations at the cmd.
15. The Tribunal had particular regard to the affidavit that had been submitted confirming the applicant's intention to return to the property.

16. The Tribunal found all parties to be truthful and straightforward in the evidence provided. The Tribunal accepted the applicants unopposed evidence that they intended to return to the live in the property as their permanent home following Mr Wordie's retirement.
17. In relation to whether it is reasonable to grant an order the Tribunal found that it was reasonable that the applicants should seek to return to live in the property where they had previously resided. The Tribunal had regard to the fact that the respondents reside in the property with their 3 children however it gave significant weight to the fact that the respondents did not seek to oppose the application. Taking the above factors into account the Tribunal was persuaded that on balance it was reasonable to grant an order for eviction in favour of the applicants.
18. The Tribunal discussed the date of enforcement of the eviction order with parties in light of the fact that the earliest date of enforcement would be 26 December 2024. Parties agreed that an extension to 6 January 2025 would be appropriate.

Decision

The Tribunal determined to grant an order of eviction relying on ground 4. The earliest date for enforcement is 6 January 2025.

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.

**Mary Claire-Kelly
Legal Member/Chair**

**26 November 2024
Date**