



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4336**

**Re: Property at Flat 0/1, 10 Northpark Street, Glasgow, G20 7AB (“the Property”)**

**Parties:**

**Mrs Changlin Sun, Flat 5/1, No. 15-2, Wansongyuan Road, JiangHan, Wuhan, Hubei PR, 430022, China (“the Applicant”)**

**Ms Jules O'Donnell (otherwise known as James Patrick O'Donnell), Mr Corey Lowdon (otherwise known as Ms Sonya Lowdon), Flat 0/1, 10 Northpark Street, Glasgow, G20 7AB; c/o 2A Phoenix Place, Stevenston, ML1 4JW (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the First Respondent, Ms Jules O'Donnell (otherwise known as James Patrick O'Donnell).**

**The Tribunal did not grant an eviction order against the Second Respondent, Mr Corey Lowdon (otherwise known as Ms Sonya Lowdon), as it was satisfied that his tenancy had come to an end in terms of section 50 (2) of the 2016 Act.**

**Background**

1. Two separate application forms were received from the Applicant's representative in respect of the two Respondents and both concerning the same property on 16 September 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules'). The applications both sought recovery of

the property under Ground 5 (family member intends to live in let property) and Ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act, as amended.

2. Attached to the application forms in respect of each application were:
  - (i) Copy tenancy agreement between the Applicant and the First Respondent which commenced on 3 March 2023
  - (ii) Copy tenancy agreement between the Applicant and the Second Respondent which commenced on 1 June 2022
  - (iii) Copy Notices to Leave (one for each Respondent) dated 19 June 2024 citing grounds 5 and 12, and stating the date before which proceedings could not be raised to be 15 September 2024, together with proof of sending by email to each Respondent
3. Further to a request from the Tribunal administration, copy emails to Glasgow City Council attaching notices (one in respect of each Respondent) under section 11 of the Homelessness etc. (Scotland) Act 2003 to North Lanarkshire Council, both dated 17 September 2024, were received from the Applicant's representative by email on 19 September 2024.
4. In the same email, the Applicant's representative requested that the two applications be dealt with separately because the two Respondents had moved into the property at different times. He was informed in a response from the tribunal administration dated 29 October 2024 that this was not necessary and that it was preferable to have one application for all joint tenants. The matter then proceeded as one application against both Respondents.
5. An email was received from the Applicant's representative on 26 September 2024, advising that the Second Respondent had confirmed that he had moved out of the property.
6. In response to a further request from the tribunal administration, further information, including rent statements relating to both Respondents and a statement from the Applicant's granddaughter regarding her intention to reside in the property, was received from the Applicant's representative on 9 November and 13 December 2024.
7. The application was accepted on 19 December 2024.
8. Notice of the case management discussion (CMD) scheduled for 6 February 2025, together with the application papers and guidance notes, was served on both Respondents by sheriff officers on behalf of the tribunal on 3 January 2025. Both Respondents were invited to submit written representations by 21 January 2025.

9. No written representations were received from either Respondent prior to the case management discussion (CMD).

### **The case management discussion**

10. The CMD was held by teleconference call on 6 February 2025. The Applicant was represented by her son, Mr Miao Deng, on the teleconference call. Neither Respondent was present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, but neither Respondent attended the teleconference call and no telephone calls or messages had been received from either of them.
11. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondents.

### **The Applicant's submissions**

12. Mr Deng told the Tribunal that Mr Lowdon had moved out of the property. He had given notice in writing on 27 September 2024 and had handed back the keys to the property in October 2024. He confirmed that he therefore no longer wished to seek an eviction order against Mr Lowdon.
13. Mr Deng said that he suspected that Ms O'Donnell may also have abandoned the property, but he was not certain of this. He had tried to speak with Ms O'Donnell but she had refused to meet him in person and there had been no communication from her in some months. Mr Deng had used tracing agents to trace Ms O'Donnell but they were only able to provide the property address. Ms O'Donnell had not returned the keys and had left some possessions, including a television and a soundbar, in the property. Letters addressed to Ms O'Donnell were still being delivered to the property.
14. Mr Deng was keen to gain access to the property to clean and renovate it. There were also issues relating to the gas meter which was £480 in debit and so he needed to change over the names on the account. He therefore wished to obtain an eviction order to allow him to take this forward.
15. Mr Deng confirmed that Ms O'Donnell had paid nothing towards the rent arrears owed and still owed the £3395 which was due as at 1 November 2024. He said that he did not believe that Ms O'Donnell had been in receipt of benefits during her tenancy.

16. In terms of ground 5, Mr Deng explained that his daughter (and the Applicant's granddaughter), Ms Ruxi Deng, intended to live in the property once it was vacant. There was before the Tribunal a signed statement by Ms Deng dated 9 November 2024 stating that she intended to make the property her primary residence and live there from around 1 December 2024.
17. Mr Deng said that Ms Deng had intended at that time to move into the property for more than three months, but the tribunal process had taken longer than expected. She was currently studying in England but was returning to Scotland during the breaks in her course. This was because her family could not afford to pay her rent in England during those periods, due to the rent arrears owed by the Respondents. She had intended to stay in the property from November 2024 until the end of January 2025. She was now back in England, and it was her intention to come back and live there during from March 2025 for at least two months, when she would return to England.
18. Mr Deng asked the Tribunal to grant an eviction order in favour of the Applicant against Ms O'Donnell.

### **Findings in fact**

19. The Tribunal made the following findings in fact:
- The Applicant owns the property and is the registered landlord for the property.
  - There was a private residential tenancy in place between the Applicant and the First Respondent, which commenced on 3 March 2023.
  - There was a private residential tenancy in place between the Applicant and the Second Respondent, which commenced on 1 June 2022.
  - Each Respondent's tenancy related to a bedroom within the property and they shared a kitchen, bathroom and hallway.
  - The rent payable under both tenancies was £225 per month initially. It was later increased to £230 per month and then to £365 per month from 1 September 2024.
  - A Notice to Leave was served on each Respondent by the Applicant's representative by email on 19 June 2024.
  - The Second Respondent confirmed to Mr Deng in writing on 27 September 2024 that he had moved out of the property.
  - At the date of the CMD, both Respondents owed more than three months' rent arrears. The First Respondent had paid no rent since November 2023. The Second Respondent had paid no rent since July 2023.

## **Reasons for decision**

20. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.
21. Firstly, with regard to the Second Respondent, Mr Lowdon, the Tribunal noted that in terms of section 50 (1) of the 2016 Act, a private residential tenancy comes to an end if:
- (a) the tenant has received a notice to leave from the landlord and
  - (b) the tenant has ceased to occupy the property.
22. Mr Deng had confirmed that Mr Lowdon was no longer living at the property. Mr Lowdon had given notice in writing on 27 September 2024, and had returned his keys through the letterbox of the property in October 2024. The Tribunal was satisfied that Mr Lowdon's tenancy had ended some months ago. It was therefore not necessary to grant an eviction order against Mr Lowdon.
23. It was not clear, however, whether Ms O'Donnell had left the property. She had left some valuable possessions in the property and had not returned the keys. The case papers had been successfully served on her by sheriff officers on behalf of the Tribunal at the property address.
24. With regard to Ms O'Donnell, the Tribunal first considered whether the legal requirements of ground 5, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 5 states:

### ***Family member intends to live in property***

- 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.*

25. In terms of paragraph 4 (b), a person is a member of the landlord's family if the person is a "qualifying relative" of the landlord. Paragraph 5 (b) states that a 'qualifying relative' means a parent, grandparent, child, grandchild, brother or sister.
26. Paragraph 7 of Ground 5 states that 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.
27. The Tribunal noted that the Applicant's granddaughter, Ms Deng, was a qualifying relative of the Applicant in terms of Ground 5, and had signed a statement stating her intention to reside in the property once it was vacant. It was not satisfied, however, that she intended to occupy the property as her only or principal home for at least 3 months. The Tribunal therefore determined that Ground 5 had not been met.
28. The Tribunal then considered whether Ground 12 (rent arrears) had been met in respect of Mr O'Donnell. Ground 12 states:

***Rent arrears***

*12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

*(2) . . . . .*

*(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) for three or more consecutive months the tenant has been in arrears of rent, and*

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

*(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit , and*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

The Tribunal noted that as at 1 November 2024, Ms O'Donnell had paid no rent since October 2023 and owed £3395 in arrears. No rent had been paid since that time. She had therefore been in rent arrears for three or more consecutive months.

30. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. The Tribunal gave particular weight to the substantial rent arrears owed by Ms O'Donnell to the Applicant. This was causing some financial difficulties for the Applicant and her family. Ms O'Donnell had not submitted any written representations opposing the eviction application and little was known about her circumstances. The Tribunal also noted that it was likely (if not certain) that Ms O'Donnell was no longer living in the property and that it had now been more than six months since the Notice to Leave had been served on her.

31. There was no evidence before the Tribunal to indicate that Ms O'Donnell's rent arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. In terms of the pre-action protocol, Mr Deng referred to emails which he had sent to Ms O'Donnell regarding reaching agreement on repayment of the arrears, but said there had been no response. The Tribunal was not persuaded that adequate pre-action protocol letters had been sent, and took this into account. The Tribunal decided that on balance, however, that in light of these considerations, it was reasonable in all the circumstances to grant an order for eviction in favour of the Applicant against Ms O'Donnell.

## **Decision**

The Tribunal grants an order in favour of the Applicant against the First Respondent for recovery of possession of the property. It does not grant an order against the Second Respondent, as it was satisfied that his tenancy had come to an end in terms of section 50 (2) of 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.**

# S O'Neill

6 February 2025

Legal Member/Chair

\_\_\_\_\_  
Date