



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 Private Housing
(Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

Chamber Ref: FTS/HPC/EV/24/0583

**Property at Flat 22 Taypark, 30 Dundee Road, Broughty Ferry, Dundee, DD5 1LX
 (“the Property”)**

Parties:

**Mr Douglas McLennan, Mrs Linda McLennan, 44 Hamilton Street, Barnhill,
Dundee, DD5 2RE (“the Applicants”)**

**Miss Carolann Curran, Flat 22 Taypark, 30 Dundee Road, Broughty Ferry,
Dundee, DD5 1LX (“the Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent. The Tribunal also ordered a delay in execution of the order until 10 June 2025.

Background

1. The Applicants lodged an application for an eviction order in terms of Section 51 and Ground 5 of the 2016 Act.
2. A CMD took place on 5 November 2024. Two related applications (CV/24/0584 and CV/24/0433) were also discussed. Following discussion with the parties, the Tribunal allowed the application to be amended to ground 4 as the person who intended to occupy the property was one of the landlords, as opposed to a member of the landlord’s property.

3. Following the CMD, the Tribunal determined that the application should proceed to a hearing.
4. The hearing was initially scheduled to take place by video conference. However, this was converted to an in person hearing at Endeavour House, 1 Greenmarket Dundee, on 12 March 2025 at 11am.
5. The Applicants attended the hearing and were represented by Ms Fitzgerald, solicitor. The Respondent attended and was supported by her daughter, Ms McKenzie.

The Hearing

6. Following discussion of some preliminary matters, Ms Fitzgerald advised the Tribunal that she had proposals to put to the Respondent. The Tribunal adjourned the hearing to allow the parties the opportunity to discuss the application and the two related applications. Following the adjournment, Ms Fitzgerald advised the Tribunal that Ms Curran was willing to give an undertaking to vacate the property by 9 June 2025. The parties were agreed that, if she failed to do so, that the Tribunal could proceed to grant the order for eviction without any further procedure. Ms Curran confirmed that she intended to vacate the property but advised the Tribunal that she would prefer not to have an eviction order granted against her. She also advised that the Applicants had undertaken to provide her with a good tenancy reference. The Tribunal indicated that it would not be possible to proceed in the way proposed. If the Respondent did not vacate the property by 9 June, the Tribunal would require to consider the case at that point (possibly at a hearing) and be satisfied that the ground was established and that it was reasonable to grant the order. There might be changes of circumstances which would have to be taken into account. The hearing was again adjourned to allow the parties to continue their discussions.
7. Following the second adjournment, Ms Fitzgerald advised the Tribunal that the parties had reached an agreement in relation to all three applications. She said that the Respondent would consent to the order being granted, on condition that the Tribunal order a delay in execution of the order until 10 June 2025. Ms Fitzgerald invited the Tribunal to grant the order on that basis and to find that it was reasonable to do so. She also advised the Tribunal that the parties were agreed that both related applications would be withdrawn. Ms Curran confirmed that she agreed with the position as set out by Ms Fitzgerald.
8. The Tribunal noted that, notwithstanding the parties' agreement, they had to be satisfied that the ground is established. The Applicants had lodged an affidavit from Ms McLennan in advance of the hearing which confirmed her intentions and the reasons for moving back to the property. In response to questions from the Tribunal, the Applicants stated that Mrs McLennan intends to live there on a full-time basis. Mr McLennan will continue to work abroad but will be back and forward. The principal reason for the return is to allow her to provide care

and support to various family members, as outlined in the affidavit.

9. Ms Curran told the Tribunal that she is looking into alternative accommodation options in both the private and social rented sector and expects to find something suitable. She said that her daughter resides with her, and both are in employment. She said that they had no health concerns or other issues which required to be taken into account by the Tribunal.

Findings in Fact

10. The Applicants are the owners and landlords of the property.
11. The Respondent is the tenant of the property in terms of a private residential tenancy.
12. The Applicants currently reside in Dubai.
13. The Second Applicant intends to return to reside in the let property. The First Applicant will continue to live and work abroad and will only stay at the property from time to time.
14. The Applicants have a number of family members in the area who now require care, support and assistance. The Second Applicant intends to return to reside in Dundee to provide that care and support.
15. The Respondent does not oppose the application.
16. The Respondent and her daughter are in employment and expect to be able to find alternative accommodation if a delay in enforcement of the order is granted to 10 June 2025.

Reasons for the decision

17. The application to the Tribunal was accompanied by a Notice to leave dated 30 October 2023, together with a copy of an email to the Respondent which establishes that the Notice was sent to her on the same date. The Notice states that an application to the Tribunal is to be made on ground 4, the landlord intends to live in the let property. The Notice states that an application to the Tribunal will not be made until 25 January 2024.
18. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

19. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
20. Ground 4 of schedule 3 (as amended) states, “(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”. In terms of paragraph 4(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,..”.
21. From the documents submitted by the Applicants, including the affidavit, and the information provided at the hearing, the Tribunal is satisfied that the one of the joint landlords intends to live in the let property as her principal home for at least three months.
22. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
- (a) As both related applications were withdrawn, the Tribunal is satisfied that the matters raised in those applications did not require to be considered and were not relevant to the question of reasonableness,
 - (b) The Respondent no longer opposes the application as long as a delay in enforcement is ordered, to allow her time to obtain alternative accommodation.
 - (c) The Second Applicant requires to return to live in the property in order to provide care and support to family members who live in the area.
 - (d) The Respondent and her adult daughter who resides with her, are in employment and expect to secure alternative accommodation in the social or private rented sector
23. Having regard to the factors outlined in the preceding paragraph, the Tribunal is satisfied that it would be reasonable to grant the order.

Delay in execution of the order in terms of Rule 16A(d) of the 2017 Procedure Rules.

24. The parties invited the Tribunal to order a delay in execution of the order until 10 June 2025, to allow the Respondent time to find alternative accommodation. The Tribunal is satisfied that this would be appropriate.

Decision

25. The Tribunal determined that an eviction order should be granted.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

19 March 2025