



**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/24/3540**

**Re: Property at 6 Crown Street, Inverness, IV2 3AX ("the Property")**

**Parties:**

**Mrs Jean Millwood, Burnside, 13B Island Bank Road, Inverness, IV2 4QN ("the Applicant")**

**Ms Nattallie Gillies, 6 Crown Street, Inverness, IV2 3AX ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)**

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

At the Case Management Discussion ("CMD") which took place by telephone conference on 11 March 2025, the Applicant was not in attendance but was represented by Ms Bruce of Macleod & MacCallum Limited. The Respondent was not present or represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD Ms Bruce on behalf of the Applicant had lodged documents by email dated 28 February 2025.

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

**The CMD**

The Applicant is the heritable proprietor of the Property.

The application concerns a Private Residential Tenancy ("PRT") entered into between the parties relative to the Property that commenced on 20 September 2019.

On 22 March 2024, the Applicant's agent served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 17 June 2024 on the basis of Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"), namely

that a family member of the Applicant intends to move into and occupy the Property as their only or principal residence for a period of at least 3 months.

The Applicant has served on Highland Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **The CMD**

At the CMD Ms Bruce made the following oral submissions:-

- i. The Respondent has been in contact with the Applicant indicating that she had received notification of the CMD and was not planning to attend. The Respondent said she is looking for local authority accommodation.
- ii. The Respondent remains in occupation of the Property with her younger son who is aged 14 years. Her older son, aged 18 years, has moved out.
- iii. Ms Bruce is not aware of whether the Respondent is in employment.
- iv. The Respondent has previously referred to having health conditions. However, these are not verified. For example, on 16 June 2022 the Respondent advised the Applicant that she had been referred to an MS specialist. On 8 November 2023 she advised the Applicant that she was receiving treatment for her kidneys. On 2 February 2025 she advised that she required to undergo two medical procedures. The precise nature of any condition suffered by the Respondent is not known.
- v. It appeared that whenever arrangements were made for the Property to be inspected the Respondent would use her health as a delaying tactic. For example on 12 October 2022 she referred to her mum having had a stroke and asked for the inspection to be delayed for a month. On 15 November 2022 the Respondent said her mum was still in hospital and that she had family visiting. On 21 November 2022 the Respondent said she was attending college in the morning and going to the hospital in the afternoon. On 25 September 2023 the Respondent said she had an appointment at the housing department. On 25 October 2023 she had said she had a lot on over the next few weeks and that her mum was ill.
- vi. Initially communications between the Applicant and the Respondent were oral but latterly by Whatsapp message.
- vii. The Applicant continues to seek an eviction order on the basis that a family member, namely her grandson, William John McKenzie, requires to occupy the Property.
- viii. William presently lives with his mother (the Applicant's daughter) and his niece in a three bedroomed house in Inverness. William's mother has parental rights and responsibilities over William's niece and her brother, Jamie.
- ix. Jamie is under a Compulsory Supervision Order by Highland Council. Ms Bruce referred to the Council's letter of 26 June 2024 and to William's Affidavit, the terms of which were noted by the Tribunal.
- x. If William moves out the Property Jamie will be able to return to his grandmother's home for overnight visits. The letter of 26 June 2024 from Highland Council makes it clear that due to his complex additional support needs Jamie would require his own bedroom and it would not be appropriate for him to share a bedroom or to sleep in a communal area of the house. The Council are obliged to support and facilitate regular family time between Jamie and his grandmother.
- xi. The rent payable by the Respondent is £662.50 per month with effect from 28 July 2024. There are no rent arrears.
- xii. It is not intended that rent will be paid by William to the Applicant when he moves into the Property.

- xiii. The Applicant also wants to cease being a landlord. She is 82 years of age. She does not own any other properties that are rented out.
- xiv. Ms Bruce stated that she has an email received by the Applicant from Highland Council which suggests the Respondent had made an application for housing, the current status of which is not known.
- xv. The Applicant also stated when the Respondent received the Notice to Leave she said she would be looking for alternative accommodation from the local authority.

### **Findings in Fact**

- i. The Applicant is the heritable proprietor of the Property.
- ii. In terms of the PRT entered into between the parties the Applicant leased the Property to the Respondent from 20 September 2019.
- iii. On 22 March 2024, the Applicant's agent served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 17 June 2024 on the basis of Ground 5 of Schedule 3 of the 2016 Act namely that a family member of the Applicant intends to move into and occupy the Property as their only or principal residence for a period of at least 3 months.
- iv. The Respondent is in occupation of the Property with her younger son, aged 14 years.
- v. The Applicant is now 82 years of age.
- vi. The family member that requires to occupy the Property as his only or principal home for at least 3 months is the Applicant's grandson, William John McKenzie.
- vii. By moving to the Property William John McKenzie's mother will then have a bedroom available to allow her grandson, Jamie, who has complex additional support needs and who is presently under a Compulsory Supervision Order in a residential school more than 150 miles away, to visit and stay overnight - such visits to be supported and facilitated by Highland Council. Jamie's needs are such that he cannot share a bedroom or sleep in a communal area of a house.
- viii. William John McKenzie's mother has parental rights and responsibilities in respect of Jamie.
- ix. The Applicant has served on Highland Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **Reasons for Decision**

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally by Ms Bruce at the CMD was not challenged and was accepted by the Tribunal.

The application proceeds upon Ground 5 of Schedule 3 of the 2016 Act.

Ground 5 states:-

*"(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.*

- (3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—*
- (a) the family member is incapable of having, or expressing, that intention, and*
  - (b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.*
- (4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—*
- (a) in a qualifying relationship with the landlord,*
  - (b) a qualifying relative of the landlord,*
  - (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or*
  - (d) in a qualifying relationship with a qualifying relative of the landlord.*
- (5) For the purposes of sub-paragraph (4)—*
- (a) two people are in a qualifying relationship with one another if they are—*
    - (i) married to each other,*
    - (ii) in a civil partnership with each other, or*
    - (iii) living together as though they were married,*
  - (b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,*
  - (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,*
  - (d) a person's stepchild is to be regarded as the person's child,*
  - (e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.*
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.*
- (7) 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."*

William John McKenzie is a member of the Applicant's family as defined, being her grandson. Evidence of his intention to live in the Property as his only or principal home for at least 3 months is constituted by his Affidavit of 8 August 2024.

The Tribunal is satisfied it is reasonable to issue an eviction order having regard to the backdrop to William John MacKenzie moving from the home where he currently lives with his mother and niece in order to free up a bedroom within that home to allow his nephew, Jamie, to visit overnight. The Tribunal had careful regard to Jamie's circumstances as outlined in the letter of Highland Council dated 26 June 2024 which are compelling.

### **Decision**

The Tribunal grants an eviction order against the Respondent in favour of the Applicant.

### **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.**

Gillian Buchanan

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**Legal Member/Chair**

**11 March 2025**  
**Date**

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