



**Decision 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/24/3930**

**Re: Property at The Lodge House, John Neilson Institute, 76 Oakshaw Street West, Paisley, PA1 2DE (“the Property”)**

**Parties:**

**Miss Caroline Lucy Steel, c/o Paul Ellis, 1395 Pollockshaws Road, Glasgow, G41 3RG (“the Applicant”)**

**Mr Donald Anderson, The Lodge House, John Neilson Institute, 76 Oakshaw Street West, Paisley, PA1 2DE (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met. The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

**Background**

- 1** The Applicant applied to the Tribunal for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 4 of schedule 3 of the 2016 Act, stating that the Applicant intended to live in the let property.
- 2** The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 27 March 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 19 February 2025. Both parties were invited to make written representations.

- 3 On 21 February 2025 the Tribunal received written representations from the Applicant's representative, TC Young Solicitors. No written representations were received from the Respondent.

### **The CMD**

- 4 The CMD took place on 27 March 2025 by teleconference. The Applicant's representative, Miss Nicola Brechany of TC Young Solicitors, joined the call along with the Applicant. The Respondent did not attend. The Tribunal delayed the commencement time of the CMD for a short period before deciding to proceed in his absence.

- 5 The Tribunal had the following documents before it:-

- (i) Form E application form dated 23 August 2024;
- (ii) Title sheet REN72886;
- (iii) Excerpt from the online landlord register confirming the Applicant's application for landlord registration is pending;
- (iv) Private residential tenancy agreement between the parties dated 4 June 2018;
- (v) Section 11 notice to Renfrewshire Council together with proof of delivery by email;
- (vi) Notice to leave dated 24 April 2024 together with proof of delivery by email and recorded delivery mail to the Respondent;
- (vii) Affidavit by the Applicant dated 19 August 2024; and
- (viii) Affidavit by the Applicant dated 20 February 2025.

- 6 The Tribunal explained the purpose of the CMD and the legal test under ground 4 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from Miss Brechany. For the avoidance of doubt the following is a summary of the key elements of the discussion relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.

- 7 Miss Brechany confirmed that the Applicant sought an eviction order under ground 4. She referred to the affidavits that had been submitted as evidence of the Applicant's intention to live in the property. A notice to leave had been sent to the Respondent on 24 April 2024 by both email and recorded delivery mail. In terms of reasonableness, the Applicant was currently "sofa surfing" between her mother's property and a friend's property. She was living out of her car. She had sold her previous home after a breakdown in relations with her neighbours. The let property was in an area that she knew well, close to friends with a good support network. She had recently enrolled in a course at the nearby college. The Applicant was suffering mentally, financially and physically because of her housing situation. She had a number of health problems, which had been exacerbated. She was incurring costs in keeping up repairs and maintenance as well as paying storage costs for her belongings.

- 8 Miss Brechany advised that the Applicant had previously had a good relationship with the Respondent. She had accompanied him to appointments with his advocacy worker following the service of the notice to leave. He had been given advice to stay in the property therefore the Applicant had no option but to apply to the Tribunal. The relationship had since broken down irretrievably. The Respondent had turned on her. The Applicant had been shocked by his actions. The Applicant understood the Respondent to be around 45 years old and unemployed. He had some minor health issues. He had previously mentioned being disabled with mobility issues however the Applicant had no knowledge of this. He resided in the property alone.
- 9 Having heard from Miss Brechany the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

### **Relevant Legislation**

- 10 The Tribunal considered the following provisions of the 2016 Act:-

#### ***Private Housing (Tenancies) (Scotland) Act 2016***

##### ***1 - Meaning of private residential tenancy***

*1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

##### ***51 First-tier Tribunal’s power to issue an eviction order***

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (i) that the landlord intends to live in the let property, [ground 4]*
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
- (iii) that the tenant has a relevant conviction, [ground 13]*
- (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*
- (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*
- (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
- (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

- (i) the eviction ground mentioned in subsection (3), and*
- (ii) an eviction ground, or grounds, mentioned in paragraph (a)*

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
- (b) that the tenant has a relevant conviction, [ground 13]*
- (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
- (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (i) that the landlord intends to live in the let property, [ground 4]*
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
- (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
- (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

## **62 Meaning of notice to leave and stated eviction ground**

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

## **Schedule 3, Part 4**

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.*

## **Findings in Fact**

- 11** The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 4 June 2018.
- 12** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 13** On 24 April 2024 the Applicant sent a notice to leave to the Respondent by email and recorded delivery mail.
- 14** The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 15** The notice to leave cited ground 4 and stated that an application to the Tribunal would not be made any earlier than 21 July 2024.
- 16** On 23 August 2024 the Applicant emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Renfrewshire Council.
- 17** The Applicant is the registered owner of the property.
- 18** The Applicant requires to bring the tenancy to an end because she intends to live in the let property. The Applicant intends to occupy the property as her only or principal home for at least 3 months. The Applicant previously resided in the property between 2009 and 2017.
- 19** The Applicant has been residing between two properties since March 2024. The Applicant sold her previous home on 13 December 2024. The Applicant has had to put her belongings in storage at a cost of £343.20 per month.
- 20** The Applicant is 54 years old and unemployed. The Applicant owns three other properties and relies upon the income from those properties.
- 21** The property is suitable for the Applicant's needs, being a one bedroom single storey cottage. The Applicant has difficulty managing stairs. The Applicant is shortly due to commence a course at the local college, which is in walking distance of the property. The Applicant has a support network of friends in the local area.
- 22** The Applicant suffers from ill health. The Applicant's current living situation is exacerbating her health issues.

- 23** The Respondent is approximately 45 years old and resides alone. The Respondent is unemployed. The Respondent has some health issues.
- 24** The Respondent has sought advice from an advocacy worker regarding these proceedings. The Respondent was advised to remain in the property following service of the notice to leave.

### **Reasons for Decision**

- 25** The Tribunal took into account the application paperwork and the submissions at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules, and make relevant findings in fact based on the information provided by the Applicant. The Respondent had been given the opportunity to attend the CMD and to make written representations but had chosen not to participate in the proceedings.
- 26** Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 4 had been met in this case.
- 27** The Tribunal accepted based on the affidavits produced and the submissions from Miss Brechany at the CMD, that the Applicant intends to live in the let property as her only or principal home for at least three months. She had provided clear and credible reasons as to why this was her intention. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 28** The Tribunal took into account the Applicant's property rights as the registered owner, which entitled her to possession of the property. The Tribunal also had regard to her current living situation. She was effectively living in a transient state, with no fixed abode. She was incurring significant ongoing costs in storing her belongings and her housing situation was having a detrimental impact on her health. Whilst the Tribunal noted that she had other rental properties, the reasons for why she wished to live in this property were understandable. It had previously been her home for an extended period of time, she was familiar with the community, and it met her current housing need. She had a support network in place in the local area. These were all factors to which the Tribunal gave significant weight.
- 29** The Tribunal carefully considered the Respondent's circumstances. Given that the Respondent had chosen not to participate in the proceedings the information the Tribunal had in this regard was limited to the submissions provided by the Applicant at the CMD. The Tribunal accepted that he was aged 45 and resided alone. He did not have any dependents who would be at risk of homelessness. Whilst the Applicant had made mention of some health



issues he may have, there was no evidence before the Tribunal to substantiate this. The Tribunal was also conscious that the local authority would have a statutory obligation to offer the Respondent housing, at least on an emergency basis, if it were to make an eviction order.

- 30** Accordingly having weighed up those factors relevant to reasonableness in this case, the Tribunal concluded that the balance weighed in favour of making an eviction order and that ground 4 had been met.
- 31** The decision of the Tribunal was unanimous.

### **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.**

Ruth O'Hare

**27 March 2025**

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**Legal Member/Chair**

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**Date**