



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/5806

Re: Property at The Old Church, Church Road, Garmouth, Moray, IV32 7SR (“the Property”)

Parties:

Mr Martin Archibald, Ard Na Mara, 5 Auchtercairn, Gairloch, IV21 2BN (“the Applicant”)

Mr Peter Smith, Mrs Anne Smith, The Old Church, Church Road, Garmouth, Moray, IV32 7SR; The Old Church, Church Road, Garmouth, Moray, IV32 7SR (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the requirements of Ground 4 of Schedule 3 to the Act had been met and that, in all the circumstances before it, it was reasonable for the Tribunal to grant an order for eviction requiring the Respondent to remove from the Property.

Background

The Applicant was the owner of the Property. He had let the Property to the Respondent under a Private Rented Tenancy on 20 June 2022. The Applicant, due to a change in circumstances, wished to return to live in the Property with his family. Following the issue of a Notice to Leave on the Respondent, the Respondent had failed to remove. Accordingly the Applicant had lodged an application with the Tribunal seeking an order for eviction against the Respondent.

The Tribunal had before it the following information:-

- Form E Application to the Tribunal under Rule 109 dated 19 December 2024;
- Copy Private Residential Tenancy between the Applicant and the Respondent dated 3 June 2022;
- Copy Notice to Leave under Ground 4 of Schedule 3 of the Act dated 11 September 2024 together with proof of service via email;
- Section 11 Homeless Notice to the relevant local authority ;
- Affidavit by the Applicant stating he requires to live in the Property dated 18 December 2024

Case Management Decision (“CMD”)

The Tribunal held a CMD on 20 May 2025 at 2pm by teleconference. The Tribunal was comprised of Mr E K Miller (Chair and Legal Member) and Mrs M Lyden (Ordinary Member). The Applicant was present on the call and represented himself. The Respondent was on the call and represented themselves.

The Applicant submitted that the Property was his family home. His wife had an illness and a few years ago they had decided to leave the family home and relocate to the west coast in the hope that a change may assist his wife’s health. They had rented a property in Gairloch. His wife’s health had deteriorated and they required to be closer to Inverness as they needed to attend the hospital more frequently. It was a significant round trip from Gairloch to Inverness and was becoming untenable for them. There were also more facilities in the location of the Property that assisted them.

The Respondent advised that they fully accepted that the Applicant’s wife was in poor health. They accepted that the Applicant and his family had a genuine desire and need to return to live in his Property. They had no objection to this and were happy for an order for eviction to be granted. They had been trying to find alternative accommodation and had been in contact with the local authority regarding this. The local authority could not rehouse them though without an eviction order.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property in 2022 to the Respondent under a Private Rented Tenancy;
- The Applicant correctly served Notice to Leave on the Respondent but the Respondent had failed to remove;
- The requirements of Ground 4 of Schedule 3 to the Act had been met.

Reasons for Decision

The Tribunal considered the submissions of the parties. The Property had previously been the main residence of the Applicant. He had left the Property to live in a different location. Due to his wife’s health issues there were good reasons why they required to return to the family home. The Applicant spoke openly about his family situation and the Tribunal had no reason to doubt the veracity of his statements. The Respondent

also confirmed that they accepted the Applicant's position and that they had no objection to an eviction order being granted.

The Tribunal was satisfied that the terms of Ground 4 of Schedule 3 to the Act had been met. The Tribunal is, however, obliged to consider whether, in all the circumstances, it is reasonable to grant the eviction. Given the Applicant had compelling reasons to return to the family home and the Respondent was content for the order to be granted, the Tribunal could see no reason for the order not to be granted and resolved to do so.

Decision

The Tribunal determined that the requirements of Ground 4 of Schedule 3 of the Act had been met and that, in all the circumstances before it, it was appropriate and reasonable to grant the order for eviction requiring the Respondent to remove from the property

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.

Ewan Miller

Legal Member/Chair

Date: 27 May 2025