

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/24/5304

Re: Property at 29 Carledubs Crescent, Broxburn, EH52 6TH (“the Property”)

Parties:

Mr Adam Niven, 27 Dargai Place, Uphall, Broxburn, EH52 6TG (“the Applicant”)

Mr Gareth (Or Garath) Jones, Josh Jones, 29 Carledubs, BROXBURN, EH52 6TH; 29 Carledubs Crescent, BROXBURN, EH52 6TH (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on ground 5 (Family member intends to live in the property) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application submitted on 15 November 2024 the applicant seeks an order for eviction on the ground that his son intends to live in the property. The application was heard alongside conjoined application FTS/HPC/CV/25/1925 seeking an order for payment in respect of arrears of rent.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Rent statements

- Affidavit signed by the applicant
 - Notice to leave with proof of service
 - Section 11 notice with proof of delivery
3. A case management discussion (“cmd”) was assigned for 10 June 2025.

Case management discussion – 10 June 2025 - teleconference

4. The applicant was represented by Ms Doyle, Solicitor, McEwan Fraser Legal. Gareth Jones appeared on behalf of both respondents.
5. Ms Doyle sought an order for eviction relying on ground 5. She stated that the applicant and his partner currently live with their 7 year old child and the applicant’s 17 year old son. The applicant’s older son is currently working to a shift pattern which means that he is usually awake whilst the rest of the household is sleeping. The property is a short distance from the applicant’s home and the applicant’s intention is that his older son will move into the property. This will resolve some of the issues that his shift working pattern is causing but also mean that he is living in close proximity should he need support from his family.
6. Ms Doyle also provided information in relation to the outstanding rent arrears at the property. She stated that the current rent arrears were £6117. The respondents had not paid full rent for a considerable period of time. The fact that the respondents are not able to meet the monthly rent charge has meant that the applicant had had to supplement the costs of running the property from his own income. Ms Doyle stated that there is a buy to let mortgage over the property which requires to be covered by the applicant.
7. Mr Jones stated that he did not seek to oppose the application. He stated that he had sought advice from the local authority and been told that he would be provided with assistance if an eviction order was granted. He stated that he and his son had fallen into arrears after his son lost his employment about 2 years before. This meant there was insufficient income coming into the house to cover the full rent. Mr Jones stated that things were starting to look better financially as his son had recently secured employment. Mr Jones accepted that the

arrears were due and did not dispute that the applicant intended for his son to move into the property.

Findings in fact and law

8. Parties entered into a private rented tenancy agreement with a commencement date of 13 November 2019.
9. Rent due is £625 per month.
10. The applicant is the sole owner of the property.
11. The applicant intends that his son will move into the property.
12. Rent arrears currently amount to £6117.
13. There is a buy to let mortgage outstanding over the property.
14. The respondents have sought advice from the local authority in relation to their housing situation.
15. The respondents do not oppose an order for eviction being granted.
16. It is reasonable to grant an order for eviction

Reasons for the decision

17. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

18. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

19. 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....

(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.

20. The Tribunal took into account the application and supporting documents and parties' oral submissions at the cmd. The Tribunal accepted the affidavit evidence that the applicant intended his 17 year old son should move into the property. This was not disputed by the respondent.

21. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against

22. The Tribunal gave significant weight to the fact that the respondents did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted.

23. The Tribunal gave weight to the fact that the applicant and his family would benefit from the arrangement where his 17 year old son moved into the property. The Tribunal gave considerable weight to the high level of rent arrears that continued to increase. From the rent accounts that had been submitted it could be seen that the respondents had not paid full rent for a significant period of time. As there was a mortgage over the property the applicant's finance was impacted by the arrears.

24. Taking the above factors into account the Tribunal determined that it was reasonable to grant an order for eviction.

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.

Mary-Claire Kelly

Legal Member/Chair

Date 10 June 2025