



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/24/4439

Re: Property at 19 Jim Bush Drive, Prestonpans, EH32 9GB (“the Property”)

Parties:

Trustees Of Finn & Tallulah O'Neill, Greenhurst Farm, Cartmel, Grange-Over-Sands, LA11 7SL (“the Applicant”)

Mr Karl Milwood, 19 Jim Bush Drive, Prestonpans, EH32 9GB (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be refused.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Grounds 4 and 5 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 23 September 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 27 May 2022;
3. Notice to Leave dated 11 June 2024 served by email of the same date;
4. Section 11 Notice to Local Authority served by email dated 21 September 2024;
5. Rent Arrears Statement as at 27 November 2024;
6. Pre Action Correspondence;
7. Certificate of Service of Tribunal CMD Notification on the Respondent by Sheriff Officers dated 27 March 2025;

8. Written Statement from Applicants received 29 May 2025.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 30 May 2025. The Applicants did not participate but were represented by Mr Alexander and Ms Young, Letting Agents. The Respondent participated and represented himself.

The Respondent's position

The Respondent confirmed he did not oppose the application. He apologised for the amount of rental arrears and explained the personal circumstances which had caused this. Whilst he did not accept the amount of arrears stated in the papers by the Applicants he did accept that the current arrears were in the region of £6-6,500.

The Respondent has care of his 3 children all of whom live with him in the Property and attend school in Edinburgh. He has a son aged 11 and twin daughters who are nearly 9.

He has been in contact with the local authority and been told he will not receive priority until an eviction order is granted.

The Applicant's position

The Applicants' Representative informed the Tribunal that the amount of arrears had increased to £9,718.52.

The Applicants were both elderly, in their 80s and wished the Property for their granddaughter aged 23 who was coming to Edinburgh to study.

The Applicants' Representative wished the Tribunal to exercise its discretion and allow the application to be considered on the basis of Ground 4 even though this Ground had not been included in the original Notice to Leave.

The Tribunal had regard to Grounds 4 and 5 of Schedule 3 to the Act which provides:

Landlord intends to live in property

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.

Family member intends to live in property

5(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.

Exercise of Discretion

This case was conjoined with EV/24/4439 in respect of which the Tribunal granted an order for recovery of possession under Ground 12.

The Tribunal at the conclusion of the CMD stated that it reserved the question of exercise of discretion to include Ground 4 and refused the application. The Tribunal were not satisfied that Grounds 4 and 5 were met in any event.

The Registered Landlords were the Applicants in terms of the Trust. The Trust was the legal entity which owned and let the Property. It did not appear to the Tribunal that the Grounds were satisfied.

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 27 May 2022;
2. The monthly rent was £772.50;
3. Notice to Leave on the basis of Ground 5 had been served on the Respondent by email on 11 June 2024;
4. As at the date of the CMD the Respondent agreed he was in arrears of rent in the region of £6-6,500;
5. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
6. PARS correspondence had been issued to the Respondent;

7. Section 11 notification had been served on the local authority;
8. The Respondent lives in the Property with his 3 children who attend school in Edinburgh;
9. The Applicants are the Trustees of a Trust in the name of their grandchildren who wish the Property vacated for their granddaughter to occupy it.

The Tribunal was not satisfied that Grounds 4 or 5 had been established or that it was reasonable to grant the order sought when the Applicants had already been granted an order for recovery of possession under Ground 12 (EV/24/0796). The Tribunal refused the application.

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.

Alan Strain

30 May 2025

Legal Member/Chair

Date