

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/24/5127

Re: Property at 7 MITCHELL WAY, TRANENT, EH33 1DL (“the Property”)

Parties:

Mr Jordan Pennycuick, 51 Moffat Walk, Trnent, EH33 2QN (“the Applicant”)

MS MORGAN STEWART, MR ANTHONY KEANE, 7 MITCHELL WAY, TRANENT, EH33 1DL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1** This is an application for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the 2016 Act. The Applicant relied upon ground 5, stating that a family member intended to live in the let property. The application was conjoined with an application for a payment order under reference FTS/HPC/CV/25/0731 as both applications involved the same parties and same tenancy.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 2 June 2025. The Tribunal gave notification of the application to the parties in accordance with Rule 17(2) of the Rules. Said

notification was served upon the Respondents by sheriff officers on 18 March 2025.

- 3 Both parties were invited to make written representations. No written representations were received regarding this application, however the Tribunal received a request for amendment of the sum sought in the conjoined application from the Applicant, as well as an email from the second Respondent on 16 May 2025 advising that he would pay off the rent arrears over the coming months.

The CMD

- 4 The CMD took place on 2 June 2025 at 10am by teleconference. Mr McTigue of Jackson Boyd Lawyers represented the Applicant. He was joined by the Applicant's mother, Ms Tracey Pennycuik, and the Applicant's sister, Ms Ellie Pennycuik.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 7 November 2024 and paper apart;
 - (ii) Title sheet ELN7533 confirming the Applicant as the registered owner of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 30 June 2023;
 - (v) Notice to leave dated 7 June 2024 and proof of delivery to the Respondents by email;
 - (vi) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Lothian Council and proof of delivery by email;
 - (vii) Rent statement; and
 - (viii) Affidavit of Ellie Pennycuik, the Applicant's sister.
- 6 The Tribunal heard submissions from Mr McTigue, the Applicant's mother and the Applicant's sister. The following is a summary of the key elements of the submissions and does not constitute a verbatim account.
- 7 Mr McTigue confirmed that the Applicant sought an eviction order as his sister wished to live in the let property. He referred to the notice to leave and the section 11 notice that had been submitted with the application, as well as affidavit from the Applicant's sister as evidence in support of the ground for possession. The Applicant's sister wished to move into the property as her current accommodation was overcrowded. The Applicant's sister had a 1 year old son who was unable to have his own bedroom. The Applicant wanted to allow his sister to live in the property so that she could save up and buy her own home. The Applicant was currently residing in Australia. He did not own any other rental properties in Scotland. The let property had previously been his home prior to moving abroad. Mr McTigue made reference to the rent arrears with regard to reasonableness. He confirmed that there had been no recent payments. The second Respondent had offered payments of £500 per month

towards the arrears by email on 4 December 2024. These payments had not materialised. Mr McTeague submitted that it would be reasonable for an eviction order to be granted.

- 8 The Tribunal heard from the Applicant's sister. She confirmed that she had become pregnant unexpectedly. It had caused her stress as her income reduced and she was unable to secure a mortgage. She was employed as a staff nurse. She was now back to work full time. Her partner was also in employment as a maintenance engineer. The plan was for herself and her partner to reside in the property with their son. The rent was affordable. It would allow her to save with a view to buying her own home at some point in future. The Applicant's sister confirmed that she had applied for social housing however due to her income she was at the bottom of the list and had been unsuccessful in her applications. She explained that she and her family were currently living between their two family homes which was difficult. They wanted a stable home for their son.
- 9 The Tribunal noted that a notice to leave had been sent to the Respondents in May 2024, which included ground 4 as the ground for possession. The Tribunal asked why this was the case. The Applicant's mother explained that she had checked the wrong box on the form. It was an error on her part.
- 10 The Tribunal asked Mr McTigue for any information regarding the Respondents' circumstances. Mr McTigue explained that he had scant information in this regard. However, he was aware that there were no children in the household. There was no suggestion that either Respondent suffered with any health issues or disabilities. They were believed to be in employment. He pointed out that the second Respondent had alluded to this in his recent email to the Tribunal. Mr McTigue did not know why the rent still went unpaid. He did not know whether the Respondents had been in contact with the local authority.

Findings in fact

- 11 The parties entered into a tenancy agreement in respect of the property, which commenced on 30 June 2023.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 7 June 2024 the Applicant sent a notice to leave to the Respondents by email. The Respondents consented to the use of email for all communications under the 2016 Act, including notices to be served, under Clause 7 of the said tenancy agreement.
- 14 The notice to leave included ground 5 of schedule 3 of the 2016 Act and stated that an application to the Tribunal would not be made any earlier than 2 September 2024.

- 15 On 31 October 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Lothian Council, notifying them that the Applicant was submitting this application to the Tribunal.
- 16 The Applicant's sister intends to live in the property as her only or principal home for at least three months upon the Respondents vacating.
- 17 The Applicant's sister and her partner have a young son. The Applicant's family is currently living between her partner's family home and her own family home.
- 18 The Applicant's sister and her family require the stability of a permanent home that will meet their needs. The Applicant's sister is unable to secure a mortgage at this time. The Applicant's sister has been unable to find a suitable rental property in the area.
- 19 The Respondents are both employed.
- 20 The Respondents have no dependents living with them.
- 21 The Respondents are in rent arrears. As at 16 May 2025, arrears in the sum of £8728.65 are outstanding.

Reasons for Decision

- 22 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondents had been given the opportunity to make written representations and attend the CMD but had chosen not to do so.
- 23 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondents had been given a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003. The Tribunal therefore considered whether ground 5 of schedule 3 of the 2016 Act had been met in this case.
- 24 Paragraph 5 of schedule 3 of the 2016 Act states:-
"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.”

- 25** The Tribunal was satisfied, having regard to the affidavit evidence before it, that the Applicant's sister was a qualifying relative for the purposes of paragraph 5(4)(b) of schedule 3 of the 2016 Act, and that she intended to occupy the let property as her only or principal home for a period of three months. Her reasons for wishing to do so were credible, and there was no contradictory evidence before the Tribunal.
- 26** The Tribunal therefore went on to consider whether it was reasonable to make an eviction order in this case, having regard to those factors relevant to an assessment of reasonableness.
- 27** The Tribunal took into account the Applicant's sister's personal circumstances and her reasons for wishing to occupy the let property, namely to provide a suitable and stable home for her family. The Tribunal also had regard to the Applicant's property rights in terms of which he was entitled to make use of the property as he saw fit. It was understandable that he would wish to provide a home for his sister's young family, given her inability to source suitable accommodation. These were all factors to which the Tribunal gave significant weight.
- 28** Whilst the Applicant had not sought to rely upon the rent arrears as a ground for possession, nonetheless the Tribunal considered the Respondents' failure to pay the contractual rent relevant to the reasonableness of making an order. The arrears were now significant, and the Tribunal considered it could place weight on the Respondents' default in this regard. They had not provide any reasonable explanation as to why the rent had gone unpaid.
- 29** The Tribunal carefully considered the Respondents' circumstances. The information the Tribunal had was limited in this regard and based on the submissions from Mr Tigue as the Respondents had not sought to provide any further information to the Tribunal. The Tribunal therefore accepted that the Respondents were in employment, and that there were no dependents who would be at risk were an eviction order to be granted. The Tribunal was also conscious that the local authority would have a statutory obligation towards the Respondent in terms of offering assistance were the Tribunal to make an eviction order.
- 30** Accordingly, having weighed the above factors as relevant to reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 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

2 June 2025

Legal Member/Chair

Date