



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing (Tenancies)(Scotland Act 2016**

**Chamber Ref: FTS/HPC/PR/25/0134**

**Re: Property at Flat 3 Block 8, Western Harbour Terrace, Newhaven, Edinburgh, EH6 6JN (“the Property”)**

**Parties:**

**Ms Morag Donnelly, Flat 54, 12 Royston Mains Crescent, Granton, EH5 1RJ (“the Applicant”)**

**Ms Frances Jean Bennie, Eden Curve, 2G Main Street, Guardbridge, Fife, KY16 0UG (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.**

**Background**

1. The background is fully laid out in the Case Management Discussion Note dated 11<sup>th</sup> July 2025.
2. On 27<sup>th</sup> February 2026 a Written Submission on behalf of the Applicant was lodged by Tenants’ Rights Scotland.

**Hearing**

3. The Hearing took place by videoconference on 6<sup>th</sup> March 2026. The Applicant was present, and was represented by her sister, Ms Wilson-Logan. The Respondent was not present, and was represented by her step daughter, Grace Bennie.

4. The Chairperson made introductions, reminded everyone of the disputed issue to be dealt with, namely whether the Tribunal had been misled in to granting the eviction order, and the law which was to be applied.
5. The Chairperson confirmed that witnesses were not put formally on oath at the Tribunal, but it was expected that everything they said to the Tribunal was the truth.
6. Neither party intended to call any witnesses.
7. The Chairperson discussed what facts could be agreed and the parties confirmed they agreed the following:
  - i. The Notice to Leave was dated 10<sup>th</sup> August 2022
  - ii. The order for Eviction was granted on 12<sup>th</sup> December 2023
  - iii. The Applicant vacated the property in April 2024
  - iv. The Respondent did not return to live on the property as her only or principal home
  - v. The rent at the date of the Applicant vacating was £875 per month

#### The Applicant's Case

8. Ms Wilson-Logan said that before the Notice to Leave was served on the Applicant the Respondent had tried to raise the rent. Agreement was finally reached about an increase in May 2022, but the Notice to Leave was then served in August 2022. She said that they had since learned that the property has been let out again, and that the rent is £1500 per month, it having been £875 per month when the Applicant was the tenant.
9. Ms Wilson-Logan said that there were no attempts on the Respondent's behalf to move in, or to prepare the property for someone to live in it. There were no curtains at the front of the property, and the bedroom curtains were pulled closed the whole time. She said that she believed that the crux of the matter was that the Respondent was looking for a higher rental rate. She made reference to the letters from neighbours which she had lodged prior to the Case Management Discussion, and which confirmed no one was living there.
10. Ms Wilson-Logan said that at the hearing in the eviction case it had been said that the Respondent required to move back in due to mobility issues, and that it was very urgent, and that a care plan was to be put in place. She was of the view that these statements had been untrue and that the Tribunal had been misled. She said that as far as she is aware the Respondent continues to live in her home in Guardbridge.
11. Ms Wilson-Logan said that the Applicant had been rendered homeless for eight months. She had serious health issues. She incurred storage costs. She now has social housing, but there were months of uncertainty and upset. She

had loved living in the property, and at the outset had been told that she could live there as long as she needed to.

12. Ms Wilson-Logan was asked about a statement she made at the eviction hearing, when she said that she believed that the Respondent genuinely wanted to live in the property. She said that she did not want to make out that the Respondent was a liar in front of her son and step-daughter. She had no evidence to the contrary. She said that her view now is that it was not the case, the Respondent did not want to live in the property.

### The Respondent's Case

13. Mrs Bennie said that everything had been done in good faith. She said that the Respondent's medical situation had changed very significantly since the Notice to Leave was served in August 2022. The Respondent suffered a TIA in 2022 and that was what led to the Notice to Leave being served. The Respondent did not receive a formal diagnosis of dementia until much later. The intention when the Notice to Leave was served was for the Respondent to move in to the flat. It was a ground floor flat and it was thought that it would be easier for her mobility wise. She said that had the flat been vacant in August 2022 there would not have been a problem with the Respondent moving in. However, by the time the whole process had been carried out and the Applicant left in April 2024 things were a lot more difficult.
14. Mrs Bennie said that after the Applicant moved out the family did some work on the property to prepare for the Respondent to move in. They did some decorating, and moved in a bed, sofas, kitchen equipment and some other things. There were no curtains at the lounge or bedroom windows. The intention was to involve the Respondent as much as possible in the preparation, and it was hoped that she could choose the curtains
15. Mrs Bennie said that she brought the Respondent to the property in August 2024 and they stayed for one night. The plan had been to stay longer, but the Respondent could not relate to the property. She could not find anything. She could not work the central heating. They returned to the property at Guardbridge.
16. Mrs Bennie said that the Respondent remains in the property at Guardbridge. She knows where everything is there. Her world has completely shrunk in the last few years. She cannot relate to things in the same way. She cannot cope physically, or with new things or people that she does not know or recognise.
17. Mrs Bennie said that after the attempt to move in in August 2024 the family considered if another attempt should be made. In early 2025 they spoke to a letting agent as the move was not going to be possible. Some further work was carried out to the property, and it was re-let in or around August 2025. The rent is £1500 per month.

## Further Points

18. The Applicant said that she did not accept that any decoration had been done or that furniture had been put in. She said that they had been watching the flat quite vigorously. She said that at no time was a care package arranged. She said that the Respondent's dementia was not diagnosed until 2024.
19. Mrs Bennie said in response that the decoration was done at the back of the flat, and none done at the lounge at the front until 2025. She said that furniture was moved in between April and August 2024. She also confirmed that she is staying with the Respondent in Guardbridge and she effectively is the care package.

## Submissions

20. Ms Wilson-Logan said that she considered that the Applicant had been unlawfully evicted from the property due the Tribunal being misled as to her intention to move back in to the property. She referred to Rule 110 of the Tribunal's Rules and to section 57 of the 2016 Act. She said that the Respondent had to live in the property. She did not consider that it was ever the intention that the Respondent was going to move in to the property. She adopted the written submission submitted by Tenants' Rights Scotland as her submission.
21. Mrs Bennie said that the intention was for the Respondent to move back in, but the proceedings took so long that the medical situation overtook things. She said that she would not have spent time going to prepare the property if there had been no intention that the Respondent would move in.

## **Findings in Fact**

- a. The Notice to Leave was dated 10<sup>th</sup> August 2022;
- b. The order for Eviction was granted on 12<sup>th</sup> December 2023;
- c. The Applicant vacated the property in April 2024;
- d. The Respondent did not return to live in the property as her only or principal home;
- e. The rent at the date of the Applicant vacating was £875 per month;
- f. The Respondent's health deteriorated between August 2022 and April 2024;
- g. After the Applicant vacated the property the Respondent's family did some decorating and moved some furniture in;
- h. The Respondent spent a night in the property, along with Grace Bennie, in August 2024;
- i. The Respondent did not settle in the property;
- j. In early 2025 the family decided that no further attempt would be made to rehabilitate the Respondent in the property;
- k. The property was re-let in August 2025 at a rent of £1500 per month;

- I. The Respondent continues to reside in the property at Guardbridge with Grace Bennie as her live in carer.

## Reasons for Decision

22. The law applicable here is section 57 of the Private Housing (Tenancies)(Scotland) Act 2016 and Ground 4 of Schedule 3 of the Act, which are as follows:

*S57 (1) This section applies where a private residential tenancy has been brought to an end by an eviction order.*

*(2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was, immediately before the tenancy ended, either the tenant or a joint tenant under the tenancy.*

*(3) The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.*

*(4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.*

### *Ground 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 subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.*

23. The Tribunal was of the view that everyone had told the truth.

24. At one point Ms Wilson-Logan mentioned that the Respondent, to satisfy the terms of Ground 4, had to occupy the property as her only or principal home. This is not correct. The Ground, at part (1) states that "It is an eviction ground that the landlord intends to live in the let property." The Tribunal is of the view, from what was heard, that the intention at both the date of the Notice to Leave being served, and the date the eviction order was granted, was for the Respondent to return to live in the property, and that this was a genuine intention. Mrs Bennie went on to describe what efforts were made to ready the property and also described the night that was spent there and why it was then decided that the Respondent could not return permanently. There was then a further period of a year before the property was let out again. The Tribunal did not think that there had been any attempt by, or on behalf of, the Respondent to mislead the Tribunal which heard the eviction case.

25. Ms Wilson-Logan contended that the whole reason for evicting the Applicant was so that the property could be re-let for a higher monthly rent. The Tribunal could see why she might have drawn that conclusion, but it would have not made any commercial sense for the Respondent and her family to wait nearly 18 months, between the Applicant vacating in April 2024 and the property being re-let in August 2025 if the intention had been merely to gain a higher rent.

26. The Tribunal finds that the Tribunal who heard the eviction application were not misled in terms of section 57(3) of the Act and therefore dismisses 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.

Alison Kelly

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Legal Member/Chair

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Date

06 March 2026