



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

**Chamber Ref: FTS/HPC/EV/21/0132**

**Re: Property at Balegra Farm, Shannochie, Isle of Arran, KA27 8SH (“the Property”)**

**Parties:**

**Mr Alan McGrath, 2 Glen Court, Brodick, Isle of Arran, KA27 8BP (“the Applicant”)**

**Mr Jeremy Nicholson and Mrs Pauline Nicholson, Balegra Farm, Shannochie, Isle of Arran, KA27 8SH (“the Respondents”)**

**Tribunal Members:**

**David Preston (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision (in absence of the Respondents):**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an order for eviction be granted in favour of the applicants.**

**Background:**

1. By application dated 19 January 2021 the applicant applied to the tribunal for an order for eviction and possession of the property on the basis of Ground 4 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
2. The relevant papers before the tribunal comprised:
  - a. Private Residential Tenancy Agreement;
  - b. email correspondence between the parties in respect of commencement of tenancy dater 4 and 5 February 2019;
  - c. Notice to Leave with Post Office Receipt dated 9 September 2020 and Track & Trace Delivery Receipt dated 10 September 2020;
  - d. Notice under section 11 of the Homelessness etc (Scotland) Act 2003;
  - e. Title Information relative to the property – BUT5189;

- f. Sheriff Officer's Report dated 18 March 2021 and Certificates of Service dated 15 March 2021 confirming service of a full set of papers on the respondents;
  - g. Letter from Paterson Holms on behalf of applicant with representations in relation to reasonableness of granting the application;
  - h. Emails from the respondents dated 3 and 5 April 2021 incorporating their written representations;
  - i. Three emails from the respondent dated 11 April 2021 with accompanying photographs;
  - j. Undated statement from applicant;
3. By Decision dated 8 March 2021, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal.

### **Case Management Discussion**

4. On 14 April 2021 a CMD was convened by telephone in terms of the Notice of Intimation. Ms Quirk, Solicitor, Paterson Holms was in attendance on behalf of the applicant. There was no appearance by or on behalf of the respondents by 10.10am.
5. Notice of the CMD had been served on the respondents together with a full set of papers relating to the application. The tribunal was satisfied that due notice had been given to the respondents to which they had responded in writing but had failed to attend the CMD, and they had therefore voluntarily waived their right to attend or be represented. The tribunal was content to proceed in their absence.
6. Ms Quirk confirmed that the respondents were believed to have left the property although despite an arrangement between them and the applicant to return the keys at noon on 13 April 2021 they had failed to turn up. The applicant was seeking possession of the property on the basis of Ground 4, namely that he intends to live in the property as confirmed in his statement.
7. Ms Quirk advised that the respondent had attended the property at noon on 13 April 2021 to recover the keys but the respondents were believed to have left the island prior to that without depositing the keys or advising where they might be located. She advised that the applicant described the property as being virtually empty although some furniture remained inside and a number of old cars had been left in an adjoining field which had not formed part of the tenanted subjects.
8. In the circumstances Ms Quirk sought an Order for eviction in the absence of the keys having been returned.

### **Reasons for Decision:**

9. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on

the basis of the information presented to it, it was able to determine the application at the CMD.

10. The tribunal was satisfied that the applicant is the owner of the property and he intends to live in the property as evidenced by his undated statement before the tribunal.
11. The tribunal had regard to the representations and photographs submitted by the respondents and determined that these had no bearing on the question of their eviction from property on the basis of ground 4 which, under normal circumstances is a mandatory ground in terms of the Act but during the currency of the pandemic requires the tribunal to be satisfied that the granting of an Order is reasonable. Nothing in the representations addressed this issue.
12. In terms of the Coronavirus (Scotland) Act 2020 and the Regulations made thereunder, the tribunal requires to be satisfied that it is reasonable, in all the circumstances, for an Order for Eviction to be granted. The tribunal had regard to the terms of the undated statement by the applicant and the terms of the representations made by the respondents. The respondents did not provide any information about details which might render the granting of an Eviction Order unreasonable. The tribunal also noted respondents had advised in their email of 5 April 2021 that they intended to remove from the property on 12 April 2021 and travel from the island on 13 April 2021.
13. Accordingly, in terms of Paragraph 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, the tribunal determined that it was reasonable to grant the 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.**

David Preston

14 April 2021