

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/21/0426**

**Re: Property at Kalray, Athole Street, Coupar, Angus, PH13 9AA (“the Property”)**

**Parties:**

**Mr Philip McKenna, St Anne's, Golf Course Road, Rosemount, Blairgowrie, PH10 6LF (“the Applicant”)**

**Mr Andrew Mason, Ms Kirstie MacFarlane, Kalray, Athole Street, Coupar, Angus, PH13 9AA (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)  
Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. The Applicant is the Landlord of the property, the Respondents being the tenants in terms of a private residential tenancy entered into between the parties;
2. A Notice to Leave dated 12 November 2020 was served upon the Respondents personally. That Notice intimated that the Landlord was seeking recovery and possession of the property on the grounds that a member of his family (his daughter) intended living in the property (ground 5 of Schedule 3 of the Private Housing (Tenancy) (Scotland) Act 2016 (“the 2016 Act”));
3. The Notice to Leave was served personally on the Respondents on 12 November 2020;
4. The Notice to Leave intimated that proceedings for removal would not be raised prior to 13 February 2021;
5. The Landlord presented an application to the Tribunal dated 22 February 2021 seeking an Order for removal of the Respondents from the property;
6. A Notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 had been intimated to the relevant Local Authority;

## THE CASE MANAGEMENT DISCUSSION

7. The Case Management discussion was held on 7 May 2021 at 2pm by teleconference. The Applicant was represented by Kevin Lancaster of Messrs Watson and Lyall Bowie, Solicitors. The Respondents did not participate in the Case Management Discussion;
8. The Respondents failed to attend. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondents, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
9. The Tribunal enquired of Mr Lancaster as to whether or not he was aware of any communication between the parties and whether or not he knew as to whether or not the Respondents were aware of the Case Management Discussion. He provided the following comments:-
  - He believed that the Applicant and Respondents had been in contact with one another in relation to a matter of rent arrears which had accrued. Those presently stood at approximately £3,000 although no proceedings for recovery have been raised;
  - His understanding is that the Respondents wish an Order for eviction to be granted as they are seeking alternative accommodation to enable them to be considered as homeless;
  - He has no information as to the knowledge of the Respondents in relation to the Case Management Discussion, but is proceeding on the assumption that the proceedings have been intimated to the Respondents by the Tribunal;

## FINDINGS IN FACT

10. The Tribunal made the following findings in fact:-
  - a) The Applicant is the Landlord of the property, the Respondents being the tenants in terms of a private residential tenancy entered into between the parties;
  - b) A Notice to Leave dated 12 November 2020 was served upon the Respondents personally. That Notice intimated that the Landlord was seeking recovery and possession of the property on the grounds that a member of his family (his daughter) intended living in the property (ground 5 of Schedule 3 of the Private Housing (Tenancy) (Scotland) Act 2016);
  - c) The Notice to Leave was served personally on the Respondents on 12 November 2020;
  - d) The Notice to Leave intimated that proceedings for removal would not be raised prior to 13 February 2021;

- e) The Landlord presented an application to the Tribunal dated 22 February 2021 seeking an Order for removal of the Respondents from the property;
- f) A Notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 had been intimated to the relevant Local Authority ;
- g) The Applicant's daughter is a qualifying relative in terms of ground 5(1)(5)(b) of Schedule 3 of the Private Housing (Tenancy) (Scotland) Act 2016;
- h) It is reasonable to grant the order;

## **REASONS FOR DECISION**

11. While the Respondents did not participate in the Case Management Discussion, the Tribunal required to consider the application before it. In doing so, the Tribunal noted that a Notice to Leave in proper form had been served, that proceedings had been raised only after the period of Notice had expired; That the necessary intimation had been provided to the Local Authority in terms of the Homelessness etc (Scotland) Act 2003 and that the requirements of ground 5 of Schedule 3 of the 2016 Act were met, thus enabling the Tribunal to consider the application for an order for eviction;
12. In the circumstances, it appeared that a factual and legal basis had been made out for an order for eviction to be granted. Given that there was no appearance by or on behalf of the Respondents, there was no information before the Tribunal to enable it to conclude otherwise than that granting an order for eviction was reasonable and appropriate in the circumstances.

## **DECISION**

The Tribunal grants order to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at Kalray, Athole Street, Coupar, Angus, PH13 9AA and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 14 June 2021

## **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.**

# V Crawford

07/05/21

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**Legal Member/Chair**

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**Date**