



**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/20/1679**

**Re: Property at 1 (Flat 11), East Pilton Farm Crossway, Edinburgh, EH5 2QG (“the Property”)**

**Parties:**

**Mr Alex Harris, 35 Balgreen Road, Edinburgh, EH12 5TY (“the Applicant”)**

**Mr Michele Del Gaudio, 1 (Flat 11), East Pilton Farm Crossway, Edinburgh, EH5 2QG (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

By application, received by the Tribunal on 7 August 2020, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) The Ground relied on was Ground 4 of Schedule 3 to the Act, namely that the Applicant intends to live in the let property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing 27 February 2019, a Notice to Leave dated 7 January 2020, advising the Respondent that an application to the Tribunal for an Eviction Order would not be made before 4 April 2020, and written intimation to the Respondent that, due to the circumstances surrounding the COVID-19 outbreak and the fact that restrictions had now been lifted, the Applicant would require him to vacate the Property no later than 31 July 2020. The Applicant also provided the Tribunal with a written and witnessed statement dated 1 September 2020, in which he advised the Tribunal that he wished to return to live in the Property as soon as possible and that, since returning to Edinburgh, he had had to live at his

mother's home with his partner, which was not convenient. He stated that he had no intention of letting the Property again.

On 23 September 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 14 October 200. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by way of a telephone conference call on the morning of 26 October 2020. The Applicant was represented by Miss Nancy Booth of Booth Property Management, Haddington. The Respondent participated and was assisted by an interpreter, Mr Giovanni Bonafin.

The Respondent told the Tribunal that whenever he received the Notice to Leave, he started to look for alternative accommodation for himself, his wife and their two children, but the COVID-19 lockdown measures had come into force just at that time. His landlord had granted him an extension of time and he had found a new-build flat but, again due to lockdown, the completion date of June or July had not been met and he was told that it would not be ready until November 2020. Two weeks ago, he had been advised that the date would now be February 2021. He understood that the Applicant wanted to move back in, but it was very difficult to obtain accommodation for the intervening three-month period. He was using agents rather than dealing directly with landlords and, in assessing his ability to meet rent, agents would only consider his UK income, not any additional income from Italy. If the Eviction Order could be postponed until February, he would continue to look for alternative, short-term, accommodation and would move out if that could be found.

The Applicant's representative told the Tribunal that she completely understood the Respondent's predicament, but the Applicant's accommodation situation was tenuous, and he was really keen to get back in as soon as possible. There was also no guarantee that a February completion date for the Respondent's new property would be met.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information a documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 4 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that the landlord intends to live in the let property and that the Tribunal must find that Ground 4 applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months and that evidence tending to show that the landlord has that intention includes (for example) an affidavit stating that the landlord has that intention.

The Tribunal was satisfied that, as the Notice to Leave on which the Applicant relied had been served before 7 April 2020, the provisions of the Coronavirus (Scotland) Act 2020 did not apply. The Tribunal noted the written statement given by the

Applicant which, whilst not meeting the test of an Affidavit, indicated a clear intention to live in the Property and gave a cogent reason for wishing to do so, namely that he had a partner and that it was inconvenient to continue to live with his mother. The Tribunal accepted that the requirements of Ground 12 had been met and that, Ground 4 being mandatory, an Eviction Order must be issued.

The Tribunal had considerable sympathy for the Respondent, who was in a situation which was not of his making. There was no suggestion that he and his family had been anything other than good tenants. The Applicant had, however, satisfied the Tribunal that he wished to resume living in the Property as soon as possible and the Tribunal did not feel that in such circumstances, it would be appropriate to make an Order, but then to delay its effect by putting back the date on which it could be enforced.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

### **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.**

George Clark

---

**Legal Member/Chair**

**26 October 2020**  
**Date**