

**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/20/2052**

**Re: Property at 107 Main Street, Wishaw, North Lanarkshire, ML2 7AU (“the Property”)**

**Parties:**

**Mr Shahzad Ahmed, 72 Culzean Drive, Newarthill, Motherwell, North Lanarkshire (“the Applicant”)**

**Mr David Taylor, Ms Abbie McLaughlin, 6 Mollinson Avenue, Harthill, ML7 5SQ (“the Respondents”)**

**Tribunal Members:**

**Andrew Upton (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted under ground 10 in respect that the Respondents are not occupying the Property as their home.**

**FINDINGS IN FACT**

1. The Applicant is the landlord, and the Respondents the tenants, of the Property under and in terms of a Private Residential Tenancy.
2. The Respondents have not occupied the Property as their only or principal home since at least 13 June 2020.
3. The Respondents’ failure to occupy the Property as their only or principal home is not attributable to a breach by the Applicant of his duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.
4. The Applicant gave Notice to Leave to the Respondents dated 30 July 2020 and giving the Respondents 28 days’ notice that an application for eviction would be brought under Ground 10.

## FINDINGS IN FACT AND LAW

1. The requirements of Ground 10 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 are satisfied.
2. The requirements of section 51(1) are satisfied.
3. It is reasonable to grant the eviction order.

## STATEMENT OF REASONS

1. This application called for its Case Management Discussion by teleconference on 5 November 2020 together with the grouped application seeking an eviction order (CV/20/1622). The Applicant was represented by his wife, Mrs Ahmed. The Respondents were neither present nor represented.
2. In this application, the Applicant seeks an eviction order. He asserts that the Respondents are not occupying the Property as their only or principal home. He founds upon a text message from the Respondents in terms of which they indicated that they had removed from the Property out of fear for their safety after having been attacked in the locality, and did not intend to return. The Respondents have not returned the keys and have left items in the Property. The Applicant served Notice to Leave dated 30 July 2020 on the Respondents under Ground 10. The relevant notice period has expired.
3. In terms of Rule 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rule of Procedure, I may do anything at a Case Management Discussion that I may do at a Hearing, including make a decision. In terms of Rule 2, I must have regard to the overriding objective to deal with proceedings justly (including to deal with them expeditiously) when making a decision.
4. The Respondents have had notice of this Application and the Applicant's assertions therein. They have chosen not to avail themselves of the opportunity to dispute the matters set out in the Application. I therefore consider them not to be in dispute.
5. In terms of the Private Housing (Tenancies) (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020:-

### ***"51 First-tier Tribunal's power to issue an eviction order***

- (1) The First-tier 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 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

***52 Applications for eviction orders and consideration of them***

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
  - (a) subsection (3), or
  - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
  - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
  - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

***54 Restriction on applying during the notice period***

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.
- (2) The relevant period in relation to a notice to leave—
  - (a) begins on the day the tenant receives the notice to leave from the landlord,
  - (b) in the case of a notice served before 3 October 2020, expires on the day falling—
    - (i) 28 days after it begins if subsection (3) applies,

- (ii) three months after it begins if subsection (3A) applies,
    - (iii) six months after it begins if neither subsection (3) nor (3A) applies, and
  - (c) in the case of a notice served on or after 3 October 2020, expires on the day falling—
    - (i) 28 days after it begins if subsection (3B) applies,
    - (ii) three months after it begins if subsection (3C) applies,
    - (iii) six months after it begins if neither subsection (3B) nor (3C) applies.
- (3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home.
- (3A) This subsection applies if—
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
    - (i) that the landlord intends to live in the let property,
    - (ii) that a member of the landlord's family intends to live in the let property,
    - (iii) that the tenant has a relevant conviction,
    - (iv) that the tenant has engaged in relevant anti-social behaviour,
    - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour,
    - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
    - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or
  - (b) the only eviction grounds stated in the notice to leave are—
    - (i) the eviction ground mentioned in subsection (3), and
    - (ii) an eviction ground, or grounds, mentioned in paragraph (a).

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (a) that the tenant is not occupying the let property as the tenant's home,
- (b) that the tenant has a relevant conviction,
- (c) that the tenant has engaged in relevant anti-social behaviour, or
- (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(3C) This subsection applies if—

- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
  - (i) that the landlord intends to live in the let property,
  - (ii) that a member of the landlord's family intends to live in the let property,
  - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
  - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or
- (b) the only eviction grounds stated in the notice to leave are—
  - (i) an eviction ground, or grounds, mentioned in subsection (3B), and
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a).

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

***Schedule 3, Paragraph 10 Not occupying let property***

- (1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

- (a) the let property is not being occupied as the only or principal home of—
    - (i) the tenant, or
    - (ii) a person to whom a sub-tenancy of the let property has been lawfully granted,
  - (b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and
  - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
- (3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3)."

6. I am satisfied that the Respondents are not occupying the Property as their only and principal home, that this has nothing to do with any breach of the Applicant's statutory obligations, and that valid notice to leave has been given to the Respondents. I am also satisfied that, in all of the circumstances and in absence of any representation to the contrary from the Respondents, that it is reasonable to grant the eviction order. I will do so.

### **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.**

Andrew Upton

05/11/2020

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**Legal Member/Chair**

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**Date**