



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref:** FTS/HPC/EV/21/0017

**Re:** Property at 30 Shaw Street, Dunfermline, Fife KY11 4AX (“the Property”)

**Parties:**

Mrs Julie Duncan, 10 Dalcross Way, Dunfermline, Fife KY12 7RT (“the Applicant”)

Mr Peter Smith, 30 Shaw Street, Dunfermline, Fife KY11 4AX (“the Respondent”)

**Tribunal Members:**

Mark Thorley (Legal Member)

Angus Lamont (Ordinary Member)

**Decision**

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

**Background**

The applicant lodged an application to the First-tier Tribunal dated 5 January 2020. The narrative for the application at that time was that there were rent arrears on the property. The respondent had changed the locks. He was opening the landlord’s mail and smoking cannabis within the property. The applicant also wished a payment of £7,500. Along with the application was lodged various documents. These include Notice to Leave, pre-action requirements, Section 11 notice, additional notice for section 6, changed locks photos and rent arrears details.

The Tribunal acknowledged receipt of the application on 6 January 2021.

By letter dated 19 January 2021 the Tribunal wrote to the applicant requiring certain further information. The application was then clarified by the applicant to the extent that the ground of eviction that was being sought was that the applicant’s husband wished to live in the property. The Tribunal wrote again to the applicant on 8 February 2021 again requesting certain further information. The applicant confirmed on 9 February 2021 that she wished to proceed on ground 5 alone. On 9 March 2021 the application was accepted and thereafter a case management hearing was assigned for 22 April 2021.

A case management hearing took place on 22 April 2021. The respondent did not attend at that but had sought postponement. Postponement did not take place but the Tribunal wished to have a hearing at which evidence would be led.

### **The Hearing**

At the hearing the applicant attended along with her husband Mr Steven Duncan. The respondent was also present on the telephone.

### **Findings in Fact**

1. A tenancy exists for the rental of a property at 30 Shaw Street, Dunfermline KY11 4AX between the applicant and the respondent with rent due in the sum of £500 per month. The applicant has sought to recover the property on ground 5 namely that her husband wishes to occupy the property. The applicant has eight tenanted properties.
2. The applicant chose to secure the return of this property on the basis that the tenant in this property (her brother) had not been paying rent and in her other properties the tenants were paying rent.
3. The reason to seek recovery of this property was not based on the applicant's husband requiring the property to live in.

### **Reasons for decision**

In support of the application the applicant had lodged an Affidavit of her husband. It was very brief. It was acknowledged by the Tribunal that the applicant was not legally trained and had not had the benefit of legal advice in relation to the application.

The applicant gave evidence along with her husband (the author of the Affidavit). Mr Smith also gave evidence. Mr Smith is the brother of the applicant. There is clearly a history between the parties. The applicant's position is that she and her husband had separated. He was living at his parents' house.

Mr Duncan was asked in connection with his Affidavit about words that he used which was that he wanted to use the property at 30 Shaw Street, Dunfermline "until these issues can be solved" and that he would live there until "things can hopefully be resolved". It was essential to get an answer to what was meant here. Even after evidence was given it was still unclear what was meant here.

On one view the issues would be resolved by the tenant departing the tenancy.

The overriding impression was that the applicant simply wanted rid of the tenant. There was no doubt that the tenant was in significant rent arrears.

However the applicant was clear that she wanted this tenant removed from this property because her other tenants were all paying rent. The respondent here was not paying rent.

Therefore the Tribunal took from this that really this was a matter that was about non-payment of rent but that was not the ground upon which the application proceeded. The Tribunal were not satisfied that there was an intention by the applicant's husband to live in the property. The Tribunal considered that this was an application based on seeking to remove the tenant because he wasn't paying rent. The Tribunal did not accept the evidence of Mr Duncan.

The respondent acknowledged that he was in arrears of rent. However that was not the ground the application placed before the Tribunal.

In the circumstances therefore having not accepted the evidence of the applicant or her husband in relation to the intention to live in the property the application was refused.

### **Decision**

The application was refused.

### **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.**

**Legal Member: Mark Thorley**

**Date: 04/06/2021**