



**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/20/0570**

**Re: Property at 8 Kinneil Park, Lamlash, Isle of Arran, KA27 8JG (“the Property”)**

**Parties:**

**Mr Joseph Bolton Rae, residing at 3 Kinneil Park, Lamlash, Isle of Arran (“the Applicant”)**

**Miss Nichola Thom and Mr David Lydon, residing at 8 Kinneil Park, Lamlash, Isle of Arran, KA27 8JG (“the Respondent”)**

**Tribunal Members:**

**David Preston (Legal Member)**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined to grant an order for eviction in favour of the applicant.**

**Background:**

1. By application dated 18 February 2020 the applicant applied for an order for eviction and possession of the property on the basis of Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).
2. By Decision dated 31 August 2020, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal.
3. On 14 October 2020, a Case Management Discussion (CMD) was convened by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. The applicant and his son, Mr Duncan Rae as well as the respondents attended by telephone.
4. The papers before the tribunal comprised:
  - a. Tenancy Agreement dated 1 February 2019;
  - b. rent statement covering the period 18 June 2019 to 6 February 2020;

- c. Notice to Leave dated 9 October 2019 and Proof of Posting dated 11 October 2019;
- d. Agency Agreement from Arran Estate Agents dated 30 April 2019 re sale of the property
- e. Notice under section 11 of the Homelessness etc (Scotland) Act 2003;
- f. email from the respondents to the applicant dated 19 December 2019.

## **Case Management Discussion**

5. Mr Lydon advised that the respondents had been advised to wait for a date to be specified by the tribunal by which they were required to vacate the property in order that their application for housing could be progressed. They have been on the housing list since 2019. They had been unable to obtain alternative accommodation, even on the basis of the application and the section 11 notice. They were keen to be given a date as they wanted to move and felt frustrated by the delays that had been caused.
6. Mr Duncan Bolton, on behalf of his father, outlined the history of events and explained that his father was keen to sell the property. He said that his father's circumstances had changed in the summer of 2019, a few months after the start of the tenancy agreement. The Notice to Leave was sent to the respondents on 9 October 2019 with an effective date of 4 January 2020. On 19 December 2019 the tenants emailed to say that they were unable to vacate the property by 4 January 2020 because the housing association were unable to provide any alternative accommodation. They had been advised to await an Order from the Tribunal. As a consequence, the applicant had been unable to commence marketing the property and further delays in the progress of the application had come about due to the COVID pandemic.

## **Reasons for Decision:**

7. 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.
8. The tribunal took account of all that had been presented to it in the application and documentation as well as the representations made by the parties at the CMD. The tribunal felt it was unacceptable for the housing authorities not to take action to re-house the tenants who had been served with a Notice to Leave which had given 3 months' notice. Notice under section 11 of the Homelessness etc (Scotland) Act 2003 had also been sent to North Ayrshire Council. The purpose of these notices and procedural steps is to enable tenants to make provision to be re-housed.
9. By advising the tenants to wait for an order to be granted by the Tribunal, considerable expense has been occasioned to the public purse in convening this CMD. The applicant has been denied the opportunity of marketing his property, for over a year, which he had intended to do in April 2019 according to the Agency Agreement from Arran Estate Agents. Whilst some of this delay could be attributed

to the COVID restrictions, the applicant has been denied the opportunity to take advantage of the fact that the property market has now been opened up for some months. The tenants have also been adversely affected by the uncertainty and concern over their housing situation for that length of time.

10. Accordingly, the tribunal grants the order for possession.

### **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.**

D Preston

14 October 2020