



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

Chamber Ref: FTS/HPC/EV/21/1739

Re: Property at 67 Glengarriff Road, Bellshill, ML4 1LF (“the Property”)

Parties:

Mrs Elizabeth Doyle, 75 Cochrane Street, Bellshill, ML4 3EE (“the Applicant”)

Ms Paula Buckley, 67 Glengarriff Road, Bellshill, ML4 1LF (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted for the undernoted reasons:

A. Background:

The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 19 July 2021.

The following documents were lodged with the application:

- a) Copy Private Residential Tenancy (PRT) commencing 15 October 2020 for the property
- b) Notice to Leave dated 15 April 2021
- c) S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 16 July 2021
- d) Rent Statement up to and including 12 July 2021
- e) Letter Miller Property Management Limited dated 13 July 2021
- f) Extract Notice to Leave service advice from MYGOV website
- g) text message exchange between the parties 15.10.-21.10.2021

- h) email exchange between the parties 16.4.- Sunday 25.4.2021 under reference Notice to terminate tenancy
- i) Text exchange between parties 5.1.-12.1.2021
- j) Text exchange between parties 19.5.-25.5.2021
- k) Letter re tenant hardship loan to Ms Doyle
- l) emails 20.4.2021 re plumber appointment
- m) black and white photographs of property outside
- n) email 13.7.21 from Respondent to Applicant re citizens advice contact
- o) email 12.7.2021 from Jim Melvin Senior Housing Advice Network Officer, Coatbridge CAB
- p) undated text message exchange re plumber
- q) North Lanarkshire Council Housing Benefit letter dated 9.6.2021 to Applicant
- r) email to Respondent from Applicant 20.10.2020 headed Tenancy Agreement
- s) emails dated 12 July (no year) re inspection of property
- t) Applicant's Bank of Scotland bank statements, redacted, re rent payments
- u) Affidavit Megan Rae dated 5.8.2021
- v) Council Tax Account closure statement for 679 Coatbridge Road, Bargeddie, Baillieston, Glasgow

On 5 October 2021 a Case Management Discussion (CMD) was held. The CMD note of said day is referred to. Directions were issued to both parties. These are referred to.

On 15 October 2021 the Applicant produced in answer to the Direction:

1. Witness details
2. Email exchange 24/25 April 2021
3. Paula Buckley Housing Application Declaration
4. Affidavits from Francis Doyle, Robert Pollock and Emma Buckley
5. Santander Debit Card Transactions from 10/11 July 2021
6. HPC Written Decision regarding access to the property
7. Text message from Paula Buckley regarding access to the property
8. HPC Right of Entry Granted for 25 October 2021
9. Representations headed: Additional Relevant Information for Consideration by the Tribunal

On 19 October 2021 the Respondent's representative submitted:

1. email chain from Jim Melvin to Respondent
2. handwritten letter from Peter Gibbons dated 19.10.21
3. handwritten letter from Joyce Gibbons dated 19.10.2021
4. written submissions

On 20 October the Respondent's representative submitted:
email chain stating no S 11 notice had been received by the Council.

On 21 October 2021 the Applicant submitted:

1. further written representations
2. another S 11 copy
3. copy of email 15 July 2021 from North Lanarkshire Council
4. copy email with S 11 Notice attached to North Lanarkshire Council dated 16 July 2021

5. email from Elaine Mitchell dated 21 October 2021
6. email from Neil Kippen dated 21 October 2021

The Tribunal issued a further direction dated 21 October 2021, which is referred to for its terms.

The Applicant lodged further representations in her email on 22 October 2021. On 29 October 2021 the Applicant produced email correspondence with the Council confirming that the S 11 notice had been received on 16 July 2021 but there had been an internal problem with passing this on.

On 29 October 2021 the Respondent's representative lodged an email correspondence with the Council confirming the same circumstances.

B The hearing on 2 November 2021:

On 2 November 2021 both parties and the Respondent's representative Ms Young from Hamilton CAB took part in the hearing. At the start of the hearing the legal member confirmed that all parties had received all documents as stated above and that there were no documents missing from the above list. The legal member also confirmed with the parties that the CMD note correctly reflected the content of the CMD. The legal member further confirmed that the only matter on which evidence would be led was the issue of when the service of the Notice to Leave (NTL) took place. It was confirmed by the Respondent that nothing else was disputed. In particular Ms Young confirmed that it was agreed the S 11 notice had been correctly served on the Council and it was an internal problem at the Council which had led to some confusion.

1. The evidence of the Applicant:

[1] Mrs Doyle confirmed that she had attended with her husband at the property on 15 April 2021 to serve the NTL. She had shown this to her husband and spoken about it to him. Her husband had driven her to the property, which is an end terrace property and accessed from a ground floor door to the outside. Her husband had stayed in the garden and she had chapped on the door and spoken to the Respondent. She explained the circumstances to the Respondent and handed the NTL to the Respondent in an envelope. As it was still in lockdown she had worn a mask. She attended the property around 18:30 to 19:00 on 15 April 2021 and it was getting dark.

[2] It was an unpleasant task and she knew that the Respondent would be upset as she liked the property and had family in the vicinity. Mrs Doyle said she thought it was better explained in person. She had not been able to use a scanner or fill in a PDF as she did not have access to her office so she had printed the NTL and filled it in and decided to serve it personally as stated in the guidance. Mrs Doyle confirmed in cross examination that she had spoken to the Respondent on 15 April 2021 and that was what preceded the email on 16 April 2021. The email of 16 April 2021 is what was referred to in the application under point 5. Throughout April she provided the Respondent with information about available lets and had ongoing dialogue with her.

[3] Mrs Doyle explained that she thought that the request for further information in the email of 24 April 2021 was because the Respondent may not have been able to hand in the actual NTL document to the Council because of the lockdown and thus she had issued the email of 25 April 2021 setting out the details of the notice again. Initially there had been a dialogue but then this broke down. The rent was not paid, there was floor damage, the plumber could not gain access at the end of June. After the 2nd time of no access she had gone to speak to the Respondent at the property and realised that the Respondent had not started packing, although the Respondent had told her and continued to tell her she would get help from her parents to move out. On 12 July 2021 the Applicant then received an email from Mr Melvin advising the Respondent had no intention to move out and on 13 July 2021 the Respondent advised her she would only move with a court order.

[4] Because at the CMD the Respondent had been insistent that the NTL was served on her on the weekend of 10/11 July 2021 Mrs Doyle stated she had now provided all the written evidence that she was away that weekend with her husband and friends. When the Respondent received that information she then changed her position and said the NTL was served on the Friday 9 July. She had then obtained the email from her manager and Mr Kippen to confirm neither she nor her husband could have been at the property on 9 July 2021 as both were working in Glasgow all of that day. She confirmed neither she nor her husband were at the property on 9 July 2021 as suggested by the Respondent.

[5] She stated it takes about 30 minutes to drive from her work to the property and she went home after work and then to the caravan at about 5pm. She could not have gone in a lunch hour as she was at the College all day and had to scan in and out and so her attendance was recorded.

[6] She stated the S 11 notice was given to the Council as she was aware this had to happen before the Tribunal application and because the Respondent had stated until July that she would move out she had not given the S 11 notice before.

[7] She explained that the Respondent lives at the property with her two sons from Mr Gibbons and at no 65 the occupant is Joyce Gibbons, the Respondent's former partner's mother, who used to be her own, Mrs Doyle's, neighbour.

[8] On 9 July 2021 she had returned from work a bit early, handed the key to her house to her husband's niece, Emma Buckley, who lives at the back of her property, so the niece could feed the car and she and her husband then left to go to the Caravan. She came back on Sunday evening.

[9] Mrs Doyle interjected during the Respondent's evidence that Jim Melvin had advised both parties until he withdrew from this arrangement realising a conflict of interest. He had mentioned to her that the manner of service of the NTL would be a weak point in her case. She had not received an email from him on 25 May, as this was addressed to the Respondent, but had received the email on 12 July 2021, which was lodged. She also stated that she had not sent an email on 15

April 2021 to the Respondent but had delivered to her the NTL on that day. The reference in her email of 25 April to "recent correspondence" was a reference to the hand-delivered NTL.

2. The evidence of Mr Doyle

[1] Mr Doyle stated he drove his wife, the Applicant to the property on 15 April 2021 around 18:30/19:00 to serve the NTL. The property is a couple of miles away from his house. Mrs Doyle handed the envelope with the NTL to the Respondent and he remained in the garden. He could not see the Respondent's reaction and did not hear what was being said. He was not paying particular attention to his wife or Ms Buckley and was looking around. He was aware of the content of the envelope as he had seen his wife put the NTL in the envelope and he had discussed the content with her, in particular he was aware that the reason for the notice was that his stepdaughter was to move into the property. After he and his wife had come back to the car she said that she thought the tenant would probably not move out. There had been discussions around that subject, contingency plans for Megan, his step-daughter, if the tenant did not move and such like because people worry about these things.

[2] On 9 July 2021 he was at work all day at Parkhead Housing. He did not go to the property at lunchtime or at any other time. He left work about 4 pm and his wife got home about 5 pm. The couple left for the caravan at about 5 pm. He and Mrs Doyle returned on Sunday but the other couple stayed on. He thought that his niece had a key and would not have been given one on the day but sometimes his daughter comes and stays and she may not have returned the key to Emma. He did not know if a key was given to her on the day. He did not recall seeing Emma on that day.

[3] Mr Kippen, the person who had provided an Affidavit for Mr Doyle, was a Clerk of Works at the site, although he sometimes was in his office.

[4] Mr Doyle stated he was aware his wife had contacted the CAB and some guy ended up representing both her and the Respondent but this was not until July 2021.

[5] He stated that the way he would take to the caravan from his house did not go past the property as they lived close to direct access to the motorway.

3. The evidence of Ms Buckley:

[1] She stated that she first became aware that she may have to move on 9 July by a text message. She then rectified that statement and said it was on 9 April 2021. She then got an email on 15 April 2021. The text said something about refurbishing and selling the house and the marked being good. The email on 15 April 2021 talked about the daughter moving in. She could not really remember 15 April 2021.

[2] The Respondent insisted that the email had been lodged and explained that the telephone text was no longer available because she had a new telephone. Her representative stated that no such email had been received from the Respondent and it must be the email of 16 April 2021, which was lodged.

[3] Ms Buckley then said there had been emails back and forth. She had looked up the notice periods of 3 and 6 months. She said she then contacted South Lanarkshire Council and was told she could not get any points until she provided them with a written notice. She then contacted the CAB and Jim said to her she needed to hand a written notice to the Council. She would only get points once they had the S 11 Notice. She stated she only had the email of 16 April and had emailed that to the Council.

[4] She then stated she did not contact the CAB until 25 May 2021 and it was the housing staff at North Lanarkshire Council who gave her the contact. She stated she does not recall the next contact with the Applicant but Jim dealt with it for her and sent an email to the Applicant on 25 May 2021 about the written notice.

[5] She stated that the Applicant attended on 9 July 2021 at about 12:30 in the early afternoon. It was sunny. The kids were in the house when there was a chap at the door. It was during the holidays. The Applicant gave her the notice and said to her that Housing had this since April, which her older son would have heard. They only stayed at the door and did not come in. They stayed a couple of minutes. She further stated her ex partner comes on a Friday to see the children and he came that evening at about 5 or 5.30 pm and left at 6pm.

[6] In cross examination Mrs Doyle put to the Respondent why she had not lodged the text she allegedly received on 9 April 2021. The Respondent stated she had a new telephone. She then stated she had called the Housing Department and they told her to send them the email notice. Then nothing happened. She called them again and they said they needed the written notice. She then sent them the email which mentioned a notice period of 3 months and the daughter moving in.

[7] Ms Doyle put to the Respondent that she had been told the Council needed the NTL to proceed. Ms Buckley stated that yes that was the case but not initially. They had just asked for the email. They only said that some time in April/May. She thought they were dealing with her application. She contacted Jim at the CAB and he then said she needed written notice and told the Council she did not have a written notice.

[8] Mrs Doyle put to Mrs Buckley that maybe she did not hand it over. The Respondent stated she did not have it. The Respondent stated that Jim emailed the Applicant on 25 May.

[9] The Respondent further stated she only showed her ex partner the NTL on 9 July as he did not arrive until 5 pm or later but his mother, who is the neighbour, was in the garden and saw the Applicant and her husband on that day.

[10] When the Tribunal members asked Ms Buckley to clarify the time line she stated that she had received an email on 15 April 2021 with a notice after she had received a text on 9 July. She then again corrected that to 9 April 2021. She stated the email was giving notice. She contacted Jim on 25 May 2021 as the Housing had not told her she needed a written notice. He told her this was a legal document. The Housing staff said they needed a S 11 notice and the email of 15 April 2021 was not enough. She repeated that the Council were talking about a S 11 notice when they said what they required.

[11] She further confirmed the Applicant had sent her emails about available properties but these had been too expensive and she was looking to move into a Council property.

[12] When asked what happened on 15 April 2021 Ms Buckley said she received an email from the Applicant giving 84 days notice to 15 /16 July 2021. She had lodged this document or sent it to Ms Young. Ms Young at that point stated that this was not the case and no such email had been sent to her by Ms Buckley. All she had were the emails she had lodged from Mr Melvin.

[13] When Ms Buckley was asked by the legal member if she meant the email of 16 April 2021 Ms Buckley answered she only sent what she had about the tenancy ending. It was not the email of 25 April as she had asked for this.

[14] She then stated she had written the email asking for an extension of the notice period on 24 April after she had been advised to do so by Shelter Scotland. This had been in an online chat. They also told her without the written notice she could not do anything. She knew it was a Private Residential Tenancy and they told her the notice periods were 3 months for someone moving in and 6 months for a sale. She stated she had received two emails, one about refurbishment and sale and one about the daughter moving in.

[15] When asked why she had said at the CMD that the NTL had been given to her on the Sunday before the application was made she stated she could not remember. She had spoken to her neighbour after the CMD and the neighbour had reminded her she had seen the Applicant and her husband on the Friday.

[16] When asked why she had said at the CMD she had called the CAB on the day she received the notice but that she had called them on 12 July 2021 she said she could not remember. She just had called Jim on the Monday. She stated she had probably been distracted. There were about 4 or 5 hours between the Applicant coming at lunchtime and her ex partner arriving that evening. In that time she had gone to her neighbour and the neighbour had asked her why the Applicant and her husband had come. She had told the neighbour that they had delivered a NTL.

[17] She further stated she had looked up on the government website about notice periods of 3 and 6 months under the Coronavirus Act and then stated one of the notices she had received stated a period of 84 days, the next one stated 3 months.

[18] When asked by the Tribunal members she confirmed she had not mentioned the rent arrears to the Council when making the housing application. She had arrears from December 2020, then she paid, she had further arrears from May 2021 and tried to pay them back. She had only once not let the plumber in, the second time she was at a neighbours and by the time she came back it was too late. She had not granted access on 25 October 2021 for an inspection because one of her sons had tested positive for Covid.

4. Submissions

- a) Mrs Doyle stated that she had served the NTL on 15 April 2021 in person with a notice of 3 months to 15 July 2021. Even if she had served the NTL in July it would now be past the 3 months notice period as the Respondent was still in the property. She had been told by Jim that the personal service was a weakness in her case. He had told her it would muddy the waters if she served a further NTL. However, if she had seen the email Jim had sent to Ms Buckley on 25 May 2021 she would have simply served another NTL rather than go through the tribunal process. As it was, her daughter was still staying in temporary accommodation. She doubted that even if the Respondent had a new telephone that the old messages and emails would not be accessible and if the email of 15 April 2021 existed this would have been lodged. She again emphasised that she was not at the property on 9 July and could not understand the significance of that day at all.
- b) Ms Young for the Respondent stated that recollections can often be hazy. She submitted that the Tribunal should consider it strong evidence that the email of Jim had been sent on 12 July 2021 and that the S 11 notice was only sent by the Applicant on 16 July 2021 that this was because the NTL had been served on 9 July 2021. Ms Buckley could have confused the time of day when the NTL was served on 9 July 2021 and the Applicant and her husband could have served it on the way to the caravan in the late afternoon. The times would add up. The NTL cannot be valid as it was served on 9 July 2021 with a start date of 15 July 2021.

C. Findings in Fact:

Based on the documents lodged and the evidence at the hearing the Tribunal makes the following findings in fact:

1. The parties entered into a Private Residential Tenancy dated 15 October 2020.
2. The monthly rent is £500 per 4 weeks.
3. Rent arrears were present from December 2020 onwards and amounted to £1,585.76 by 12 July 2021.
4. Currently the tenancy is still ongoing with the Respondent and her two sons living in the property.
5. The Applicant personally served a Notice to Leave dated 15 April 2021 on the Respondent on 15 April 2021 in the early evening.

6. The Applicant had been taken to the property by her husband, who remained in the garden whilst the Applicant served the Notice to Leave.
7. The Notice to Leave was handed to the Respondent personally at her doorstep in an envelope.
8. The Applicant explained the reason for the Notice to Leave to the Respondent in person.
9. She followed this up with a further email on 16 April 2021.
10. The reason stated in the Notice to Leave is that the daughter of the Applicant requires to move into the property.
11. The Notice to Leave is based on ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016
12. The Notice to Leave states as the date on which proceedings can commence 16 July 2021 which is based on a 3 months notice period.
13. The Applicant's daughter has been staying in temporary accommodation since 16 July 2021.
14. The intention of the Applicant is for the daughter of the Applicant to live in the property with her partner.
15. This would enable the partner, who is a joiner, to carry out some work in the property and would enable the Applicant's daughter and her partner to save up funds for about a year to buy a property in the longer term.
16. An Affidavit of the Applicant's daughter dated 5 August 2021 confirming this intention has been lodged.
17. The property is the former family home of the Applicant.
18. The Respondent would move out if an eviction order is granted but not without an order.
19. The Respondent has not co-operated with inspection requests and an application for assistance to the Applicant is still pending under reference FTS/HPC/RE/21/1752.
20. The Applicant served the required S 11 Notice on the local authority on 16 July 2021.

D: Reasons for Decision:

Wording of Ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016:

Family member intends to live in property

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

- (a) in a qualifying relationship with the landlord,
- (b) a qualifying relative of the landlord,
- (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or
- (d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

- (i) married to each other,
- (ii) in a civil partnership with each other, or
- (iii) living together as though they were married,

(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

- a) As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The documents lodged and the Directions and CMD note referred to above are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged and the oral evidence received at the hearing on 2 November 2021.
- b) In terms of S 54 of the Act a 3 months notice period applied. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 16 July 2021.

- c) The Tribunal found that Ground 5 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Tribunal notes that it is not disputed that the Applicant's daughter intends to move into the property.
- d) The only matter in this case in dispute was whether or not the NTL had been served on the Respondent on 15 April 2021. On balance the Tribunal considered the Applicant's evidence in this regard credible and supported by the evidence given by her husband. Although there was a discrepancy in the evidence of Mr Doyle regarding whether or not keys had been left with his niece on 9 July 2021 before the couple set off to travel to their caravan, the Tribunal considered that in the essential aspects of the case the evidence of Mr Doyle corroborated the evidence of the Applicant that he had taken Mrs Doyle to the property on 15 April 2021 after work, that the Applicant had then handed the envelope with the NTL to the Respondent and that neither Mr nor Mrs Doyle were at the property on either 9, 10 or 11 July 2021. The Applicant correctly stated that in light of the comments of Respondent at the CMD that notice was served on the weekend prior to the application being lodged, the documents lodged by the Applicant centred around corroborating that the Applicant and her husband were not at the property on 9 July 2021 as they were travelling to their caravan over the weekend with friends. The Respondent at the hearing had repeatedly confirmed that her recollection was that the Applicant handed over the notice on the Friday in the early afternoon. The Tribunal considered that the emails from Elaine Mitchell and Neil Kippen lodged by the Applicant further corroborated the Applicant's and her husband's evidence that at the relevant time both were at work during working hours on 9 July 2021. Although neither Mr Kippen nor Ms Mitchell were cited as witnesses and thus their evidence could not be tested, they are third parties with no interest in the outcome of the case and the Tribunal attached some weight to their statements. The Applicant had been consistent in her position that she had served the NTL on 15 April 2021 and had not been at the property to do so on the weekend prior to lodging the application. The Tribunal found her evidence to be given in a frank and consistent way and believed her evidence.
- e) The statements of the Respondent made at the CMD and recorded in the CMD note and her evidence at the hearing were not entirely consistent. She and her representative had previously stated that the NTL had been served personally on the Sunday prior to the application being made to the Tribunal and then stated that it may have been as early as 9 to 11 of July 2021. The Respondent had clearly stated that she had telephoned the CAB on the day she had received the NTL and then at the hearing stated she did it on the Monday after this had occurred because she may have been distracted. She had stated at the CMD that she had no witnesses to the service as there had been no-one about and then stated in evidence at the hearing that her neighbour Joyce Gibbons, who is the mother of the ex partner of the Respondent and thus the Respondent's children's' grandmother, had been in the garden witnessing the event, as supported by the written statement of Joyce Gibbons submitted, and that she had actually visited Mrs Gibbons on the afternoon after she had received the NTL and advised Mrs Gibbons that this is what had taken place after Mrs Gibbons asked her why the Applicant

had attended the property. Mrs Gibbons was not offered as a witness and thus her evidence could not be tested. The Tribunal considered that the Respondent would have been aware that Mrs Gibbons would be a witness as she gave evidence she had actually discussed the matter with her on 9 July 2021. Overall the Tribunal notes that the Respondent repeatedly changed her statements about dates in her representations to the Tribunal and that her recollection of events appeared to be less reliable.

- f) With regard to the submissions of Ms Young on behalf of the Respondent, the Tribunal did not find the argument convincing that the date the S 11 Notice was served in any way indicates that the service of the NTL only happened on 9 July 2021. In terms of S 56 of the 2016 Act a S 11 notice has to be in place before an application to the Tribunal can be validly made and thus there is no particular time period set for this to happen other than prior to making an application. The Applicant had explained that due to the letter of Mr Melvin she was aware in mid July that the Respondent would not be moving out and thus that she would have to apply to the Tribunal. The date of 16 July 2021 for service of the S 11 notice is entirely consistent with that explanation. The letter from Mr Melvin was written after contact from the Respondent. His letter reflects the information given to him by the Respondent and not a personal observation of the service.
- g) On balance the Tribunal considered the evidence of the Applicant and her husband to be more reliable and to be credible and thus makes the finding that the NTL had been served on 15 April 2021.
- h) The Tribunal notes that the stated position of the Respondent was clearly that the NTL if served on 15 April 2021 would be valid and correct, that there is no dispute about the intention of the Applicant's daughter to move into the property and that there are no matters the Respondent wishes to rely on with regard to the issue of reasonableness of an eviction order in this case.
- i) The Tribunal was also satisfied that the Applicant's daughter's Affidavit was further reliable evidence that ground 5 of schedule 3 of the 2016 Act applies in this case.
- j) Given the length of time the Applicant's daughter has been in temporary accommodation, the length of time the Respondent has been aware of the Applicant's plans to provide the property for the Applicant's daughter, the efforts of the Applicant to provide information about alternative accommodation to the Respondent and the duty of the Local Authority to re-house the Respondent, who has two underage children, the issues between the parties such as rent arrears and the pending case regarding access to the property by the landlord, the Tribunal overall considered that it was also reasonable in all the circumstances to grant the eviction order.
- k) In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period,

determines that in terms of S 51(4) of the Act the tenancy ends on 4 December 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.

Petra Hennig McFatridge

2 November 2021

Legal Member/Chair

Date

Petra Hennig-Mcfatridge