



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

**Chamber Ref: FTS/HPC/EV/22/2762**

**Re: Property at 7 Methven Terrace, Lasswade, Midlothian, EH18 1DE (“the Property”)**

**Parties:**

**Ms Gillian Burton, 100 Auld Coal Road, Bonnyrigg, EH19 3WH (“the Applicant”)**

**Mr Ross Brand, Miss Catriona Mitchell, 7 Methven Terrace, Lasswade, Midlothian, EH18 1DE (“the Respondents.”)**

**Tribunal Members:**

**George Clark (Legal Member) and Elizabeth Dickson (Ordinary 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 Respondents.**

**Background**

By application, dated 3 August 2022, the Applicant sought an Eviction Order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 5 of Schedule 3 to the 2016 Act, namely that a Family Member intends to live in the Property. The Applicant stated that she needed the Property for her son as his principal home as there were issues within her family in the property in which they live.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 14 September 2021 at a rent of £1,050 per month, and a Notice to Leave dated 9 May 2022, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order under Ground 5 of Schedule 3 to the Act and that the application would not be made before 3 August 2022. The Applicant also provided a Statement dated 12 September

2022 from her son, Ryan Prentice, confirming that he will be moving into the Property for at least 3 months due to personal family reasons.

On 25 November 2022, 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 6 December 2022. The Respondent did not make any written representations to the Tribunal.

On 6 January 2023, the Applicant's solicitors, Jackson Boyd Lawyers, Glasgow provided the Tribunal with an Affidavit of the Applicant, dated 22 December 2022, in which she stated that she owned 2 houses, one in which she lives in with her partner and her 2 children aged 25 and 22, the other being the Property. Her partner is being treated for cancer and is undergoing chemotherapy. His mother has had to be moved into a care home and the Applicant and her partner have had to deal with this. It has been a very stressful time and has taken a toll on the family. It has been especially hard for her son, who frequently argues with her partner. The Applicant is on medication for her mental health and is also attending therapy. She wishes the Respondents to be removed from the Property, so that her son can move in. He will then have his own space and it should make life easier for all of them, especially for her partner.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 11 January 2023. The Applicant was represented by Mr John McKeown of Jackson Boyd Lawyers. The Respondents were both present.

The Respondents told the Tribunal that they had taken the lease of the Property on the basis that it was advertised as a long let. They found it hard to believe that the tensions between the Applicant's son and partner had not been an issue at the time the tenancy was granted. They also pointed out that, on the strength of it being a long let, they had themselves spent money on bringing the Property up to their standard. They regarded it as very insensitive that the Applicant had given them Notice to Leave two days before the funeral of their daughter.

Mr McKeown told the Tribunal that he had no knowledge of the basis on which the tenancy had been advertised, but that, in any event, leases are open-ended and can be brought to an end by a landlord on certain specified Grounds, one of which is that the Property is required as a residence for a member of the landlord's family who intends to live there for at least 3 months. It was not a decision that the Applicant had taken lightly. He asked the Tribunal to hold that it was reasonable to issue an Eviction Order on the basis of the evidence before it and, in particular, the Applicant's Affidavit.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 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 and 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 applies.

Ground 5 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that a member of the landlord's family intends to live in the let property and that the Tribunal may find that Ground 5 applies if 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of that fact. A landlord's son is a "qualifying relative" for the purpose of Ground 5.

The Tribunal considered carefully the facts and circumstances of the case, including the Applicant's Affidavit and her son's Statement, and, whilst noting the Respondents' view that the tensions between the Applicant's son and partner would have been evident before the tenancy was granted, decided on balance that it was satisfied that the Applicant's son intends to live in the Property as his only or principal home for at least 3 months and that it was reasonable to issue an Eviction Order on account of that fact.

### **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.**

# G. Clark

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Legal Member/Chair

**11 January 2023**  
Date