



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

**Chamber Ref: FTS/HPC/EV/21/0922**

**Re: Property at Town O'Rule Farm, Hawick, TD9 8JB (“the Property”)**

**Parties:**

**Mr Jamie Reddihough, 24 Ivy Road, Gosforth, Newcastle Upon-Tyne, NE3 1DB (“the Applicant”)**

**Mr Glen Donnelly, Mrs Louise Donnelly, Town O'Rule Farm, Hawick, TD9 8JB (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (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 against the Respondents in favour of the Applicant.**

**Background**

1. By application dated 15 April 2021, the Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, Notices to Leave with Sheriff Officer Certificates of service dated 30 December 2020, an affidavit from the Applicant and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. The application is based on ground 4 of schedule 3, the landlord intends to live in the let property.
2. The application was served on the Respondents by Sheriff Officer on 15 July 2021. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 18 August 2021 at 10am and

that they were required to participate. Prior to the CMD the Applicant lodged a further affidavit from the Applicant's partner.

3. The case called for a CMD on 18 August 2021 at 10am. The Applicant was represented by Mr Piggot, solicitor. The Respondents did not participate and was not represented.

### **Case Management Discussion**

4. Mr Piggot advised the Legal Member that the Respondents remain in occupation of the property. There has been no recent contact with them although both he and the Applicant have attempted to contact them.
5. Mr Piggot referred the Legal Member to the affidavits lodged. These state that the Applicant, his partner, and her child intend to reside at the property for 2 or 3 years, while a new property is being built for them nearby. The Applicant currently resides in Newcastle. However, he intends to occupy the property as his principal home so that he can oversee the construction of the new property. He will retain his current property in Newcastle when he requires to be there for work. The construction of the new property cannot start until the Applicant has relocated to the property. The Legal Member noted that the affidavit of the partner also indicates that she intends to enrol her son in a local school. Mr Piggot confirmed that the affidavits accurately reflect the Applicant's current intentions regarding the property. He also confirmed that the Applicant has no other properties available to him which would meet his current needs.
6. Mr Piggot advised the Legal Member that the Applicant has little information about the Respondents' circumstances. He confirmed that there are no children resident at the property with them. It is understood that the First Respondent was in employment, but it is not known whether this is still the case. The Respondents stopped paying rent in October 2020 and there are now substantial arrears. No explanation for the failure to pay rent has been provided.

### **Findings in Fact**

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
9. The Applicant intends to live at the property for two or three years.

### **Reasons for Decision**

10. The tenancy is a private residential tenancy which started on 2 April 2018. The application to the Tribunal was submitted with two Notices to leave. The Applicant also submitted Sheriff Officer certificates of service which establish

that the Notices were served on both Respondents on 30 December 2020. The Notices state that an application to the Tribunal is to be made on ground 4, the landlord intends to live in the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 31 March 2021. The application to the Tribunal was made after expiry of the notice period. The Legal Member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 (“the 2020 Act”). The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

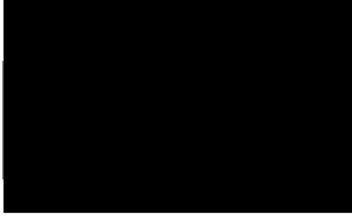
11. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 4 of Schedule 3 (as amended by the 2020 Act) states “(1) It is an eviction ground that the landlord intends to live in the let property. (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if (a) the landlord intends to occupy the let property as the landlords 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.”
12. The Respondent did not participate in the CMD and did not lodge any written representations which dispute the information provided by the Applicant. From the application and the information provided by the Applicant at the CMD, the Legal Member is satisfied that the Applicant intends to occupy the property as his principal home together with his partner and her son. They intend to live there for at least two years while overseeing the construction of a new property. The Legal Member is therefore satisfied that the Applicant intends to occupy the let property as his only or principal home for at least three months.
13. The Applicant was unable to provide the Legal member with much information about the Respondents’ circumstances and the Respondents chose not to do so. The Legal Member notes that they occupy the property alone and have incurred substantial rent arrears. They have also failed to respond to the Applicant’s attempt to contact them. The Legal Member also notes that the Applicant does not own other suitable accommodation which would meet his current needs. In the circumstances, the Legal Member is satisfied that it would be reasonable to grant an eviction order. The Legal Member therefore determines that the eviction ground has been established.
14. As the Applicant has complied with the requirements of the 2016 Act, and, as the eviction ground has been established, the Legal Member determines that an eviction order should be granted.

## **Decision**

15. The Legal Member determines that an eviction order should be granted against the Respondents.

## **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.**



**Josephine Bonnar, Legal Member**

**18 August 2021**