



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

**Chamber Ref: FTS/HPC/EV/21/0069**

**Re: Property at 5 Edmond Terrace, Croftamie, Glasgow, G63 0ER (“the Property”)**

**Parties:**

**Mr Stewart Cameron, 46 Main Street, Drymen, Glasgow (“the Applicant”)**

**Mrs Marjorie Berdon, 5 Edmond Terrace, Croftamie, Glasgow, G63 0ER (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction Order over the Property be granted against the Respondent in favour of the Applicant.**

**Background**

- 1 The Application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) was made, received by the Tribunal around 9 January 2021 and accepted.
- 2 The Application seeks an eviction Order under Ground 5 to the Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).

**The Case Management Discussion**

- 3 A Case Management Discussion (CMD) took place today by conference call. The Applicant and Respondent participated, and the Respondent was represented by Mr Christman, solicitor. The Respondent belatedly had intimated that three supporters would also join from different locations. After a discussion, one supporter was agreed for moral support namely Mr

Hanington. He remained on the line until a short adjournment took place. The Applicant's daughter Ms McGinn also sought to join. It seemed that her status was on of a witness. Therefore, the Tribunal being conscious of the potential for any conflict in her role as possibly a supporter or observer today having regard to the fact that it had not yet been decided as to whether a Hearing would be required, did not consider her participation appropriate unless specifically needed.

- 4 As a preliminary matter it was noted that the Applicant had made further submissions and comment and produced documents between 19 to 20 March 2021. Whilst those had been crossed over to the Respondent's Representative, Mr Christman when asked indicated that he had not considered those with his client and was not agreeable to their being accepted into the case. They were therefore not referred to specifically in the discussions, with Mr Christman being told that he would have the opportunity of an adjournment to take his client's instructions on them during today if needed. Ultimately, the documents were not included as there was sufficient material provided in the remaining paperwork and in the oral submissions for the Tribunal to explore how the Parties dispute may be efficiently resolved.
- 5 The detailed discussions-
  - (a) A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent over the Property with a start date of 10 April 2020.
  - (b) A Notice to Leave was served on the Respondent by the Applicant on 1 October 2020 and was emailed to the Respondent and sent to her by Recorded Delivery post. It relied on Ground 5 to the Schedule of the Act. It had with it an accompanying explanatory letter explaining why the Property was required for a family member.
  - (c) A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Stirling Council prior to these proceedings being taken.
  - (d) An affidavit of Mrs Lisa McGinn was produced along with the Applicant's submission outlining her sworn evidence, dated 3 February 2021.

Mr Christman confirmed those items were not in issue regarding the formalities.

6. The Applicant's oral submission was in summation, that he wanted the Property back for his daughter in this application. There had been two other applications to the Tribunal regarding issues between the Parties and final decisions had been made. This was the only live application remaining. His daughter had been having to flit between places with her two children and it was becoming an intolerable situation. She had previously lived in Edmond Terrace. The property she had been living in and rented for three years has problems with heating amongst others and it had gotten worse to the extent she could not live there. She had moved out from there in the winter months and in December. She was commuting to her work. She was not prepared to spend money on it without buying it from the owner, who might sell it to her, but it was a property that was difficult to obtain a mortgage on. She has continued to pay the rent but could not return there until notable works had been done and was still hoping that at some point, she might get a mortgage

to buy it longer term. She had not asked the owner to spend money on it either as it might compromise a sale to her. She wanted to live in the area and her children attended local school. Properties to rent in the area are scarce. The move to the Property was her preferred option to make the best of a bad situation. She did not want to leave the area. He accepted the scarcity of properties to rent was also a factor for the Respondent.

7. The Respondent's Representative relied on the written submission. His client's opposition to the application was based on it being not reasonable to evict. He stated that the Respondent lives at the tenancy with her two children. If it is granted, she will be made homeless and has no alternative accommodation. She had made an application for housing to Stirling Council. He understood that there was no temporary accommodation available nearby as was suggested also by the Applicant. It would have an impact on her health. She suffered from anxiety and panic attacks and had tendonitis. She was on medication and he had instructed a medical report from the GP that he awaited. Both of her children attend a local school. If they were evicted it would have a significantly disproportionate effect as it is likely to result in a change of school and affect their education and social relationships. The Applicant had said nothing today as to what steps his daughter had taken to remedy the disrepair and there would be an expectation for her to take such steps as needed regarding her landlord. Finally, it is understood that the Applicant owns a number of properties and it is unclear whether he cannot move her to other accommodation.
8. The Applicant responded stating that the children had been in school around 80 days in the last year; that he owned mostly commercial properties, had an unsuitable holiday let for short term rental only, and he had another property that had been let out to his cousin for five years on an ongoing basis. People had waited for years for properties to let come up and his daughter had lived in the area for a long time.
9. When asked where the Respondent lived before April 2020, the Respondent stated she worked as an agency nurse in every place, had a connection with her ex-partner and an address in Glasgow. Her children had gone to school in Glasgow. She was asked regarding her housing applications. She had made two and spoke of her application to the Rural Stirling Housing Association. She had been told there was no temporary accommodation in the area as lots of people were looking for property. Her points were higher now but currently there was no available housing. With regards to her other application again there was no temporary accommodation, and she may need to move to Stirling. It was too far for her to use public transport. She was told it could take her 6 months to obtain permanent accommodation.
10. Mr Christman when asked, confirmed there was no specific legislation that would require the Applicant or his daughter to pursue a repair remedy. He did however think it reasonable to take expected steps.
11. The Applicant stated that a family member had been rehoused in Stirling and if the same school was preferred then a taxi facility was provided locally for the children at the cost of bus fare.

12. An adjournment took place to allow the Tribunal to consider if the facts were sufficiently agreed to determine the case today under Ground 5 relied upon.

## **The Legislation**

### **Ground 5 to the Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act').**

#### **5 Family member intends to live in property**

- (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.

## **Findings in Fact**

- I. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent over the Property with a start date of 10 April 2020.
- II. The Respondent has lived in the Property for under one year.
- III. A Notice to Leave was served on the Respondent on 1 October 2020 and was emailed to the Respondent and sent to her by Recorded Delivery post by the Applicant. It relied on Ground 5 to the Schedule of the Act. It had with it an accompanying explanatory letter explaining why the Property was required for a family member.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Stirling Council prior to these proceedings being taken.
- V. An affidavit of Mrs Lisa McGinn was produced along with the Applicants submission outlining her sworn evidence, dated 3 February 2021.
- VI. A member of the landlord's family intends to live in the let Property.
- VII. 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.
- VIII. The Tribunal was satisfied that it is reasonable for an eviction Order to be granted.

## **Reasons for Decision & Decision**

The Tribunal considered the facts were sufficiently agreed or at least not in dispute to determine the case today. The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, with regards to the extended periods of notice to be given. The Applicant has complied with all necessary Notices to be given or served on the Respondent and on the local authority. He has in addition provided an explanation to the Respondent as to his reasons for seeking recovery along with the Notice to Leave which relies on Ground 5 in the Schedule of the Act.

It is undisputed that the formalities have been met and the only matter in issue is that of reasonableness. Whilst the viewpoint of the Parties seemed to be at odds, there was much common ground. Scarcity of properties in the immediate area to rent or buy was clearly an issue and that affected both the Applicant's daughter and her children and the Respondent and her children. Both had children who attended a local school. Both had their challenges to contend with, the Applicant's daughter trying to maintain a local connection and habitable accommodation locally for her family whilst still commuting for work during the Covid-19 pandemic. The Respondent had health issues which required her to obtain treatment from her GP and was currently off work. What was to the Tribunal a significant factor was the short duration of the let to date by the Respondent. By her own admission she had been an agency nurse and worked in many places and had come from Glasgow where the children had been schooled. Whilst it was suggested that a move from

their school would be significantly disproportionate and likely to result in changes to schooling education and social relationships, there was no evidence to form such a view having regard to the short tenure and the incidental potential effects of the pandemic on education and social contact for all. The Applicant's daughter appeared to have a more durable connection with the area as did her children's schooling. Her affidavit set out her position which had weight. She had a local connection and with family. Whilst she aspired to buy a property that was not currently a reality and she had physically moved out of the rented property to her inconvenience until, if or when repairs might be done but with no end date in sight.

The Tribunal was able to determine today that a member of the landlord's family intends to live in the let property. The Tribunal may find that the ground 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.

The Tribunal is so satisfied and determines that an eviction Order should be granted against the Respondent.

The decision is unanimous.

### **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.**

Susan Christie

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**Legal Member/Chair**

**24 March 2021**

**Date**