



**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/20/2476**

**Re: Property at 23 Araburn Drive, East Kilbride, G75 8FE (“the Property”)**

**Parties:**

**Angela Milliken, 9 Holmwood Park, Crossford, Carluke, ML8 5SZ (“the Applicant”)**

**Maureen Price, 23 Araburn Drive, East Kilbride, G75 8FE (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 28 June 2019.
2. The application was dated 24 November 2020 and lodged with the Tribunal shortly after that date.
3. The application relied upon a Notice to Leave dated 11 August 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 served upon the Respondent by hand-delivery by the Applicant’s letting agent, before a witness, on that date. The Notice relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act, being that “Your Landlord intends to live in the Let Property”. The

Notice intimated that an application to the Tribunal would not be made before 12 November 2020.

4. Evidence of a section 11 notice dated 19 February 2021 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon South Lanarkshire Council was provided with the application.

### **The Hearing**

5. On 20 April 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant’s agent, Nicola Caldwell, paralegal, of TC Young solicitors.
6. There was no appearance by the Respondent. The Applicant’s agent stated that no contact had been received from the Respondent in advance of the CMD but that, to the best of her knowledge, the Respondent continued to reside at the Property. The clerk confirmed that no contact had been received by the Tribunal from the Respondent. In the circumstances, having waited until 10:07, we were satisfied to proceed in the absence of the Respondent.
7. The Applicant’s agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
8. The Applicant’s agent relied upon the papers lodged with an application as the basis of the application. The Applicant had submitted an affidavit which, in summary, outlined that she required a new home further to break up of a relationship and that she owned the Property having inherited part of it some years before (and having subsequently purchased the remaining shares in it from family members). Her long-term intention had been to move to the Property due to the break-up and, as she and her former spouse were now finalising matters, she now required a new home. She explained that, financially, she had only the Property available to her and, due to the mortgage over the property in which she currently lived, she did not expect to be able to afford an alternative property after the sale of that property.
9. In the absence of the Respondent, we asked the Applicant’s agent for any information available to her on the Respondent’s circumstances. She conceded that she did not know if the Respondent lived alone or with family. Otherwise, the Applicant’s agent said that, to the best of her knowledge, she was unaware of any special adaptation of the Property for the Respondent’s needs, nor any other reason (such as proximity to a specific school) why the Respondent required to reside at the Property specifically. Further, the Applicant’s agent stated that she was aware that the Applicant’s letting agent and the local authority had both sought to make contact with the Respondent to have the Respondent seek alternative housing but the Respondent had not completed forms to advance this. The Applicant’s agent was not aware of any impediment to the Respondent seeking alternative accommodation beyond her own failure to take steps to seek such accommodation. Finally, the Applicant’s agent

referred to the rent for the Property being in substantial arrears and previous involvement of the Police due to anti-social behaviour at the Property.

### **Findings in Fact**

10. By an agreement dated 14 and 17 June 2019, the Applicant let the Property to the Respondent under a Private Residential Tenancy with a start date of 28 June 2019 (“the Tenancy”).
11. In terms of clause 3 of the PRT, the parties agreed that email or “personal delivery” would be sufficient for communication of notices in terms of the Tenancy.
12. On 11 August 2020, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that “Your Landlord intends to live in the Let Property” and giving the reason that the Applicant “is moving back into the property”. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 12 November 2020.
13. By personal service on 11 August 2020, a Lettings Administrator acting for the Applicant, accompanied by a witness, personally served the said Notice at the Property addressed to the Respondent.
14. The Applicant has provided the Respondent with greater than three months’ notice of the Applicant’s intentions.
15. The Applicant intends to occupy the Property as her only or principal home, and for at least 3 months following recovery of possession.
16. On 24 November 2020, the notice period under the Notice to Leave having expired without the Respondent apparently vacating the Property, the Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 4 of Schedule 3 Part 1 of the 2016 Act (as currently amended by the temporary provisions of the Coronavirus (Scotland) Act 2020), and providing an affidavit supporting her intention to occupy the Property as her only or principal home.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon South Lanarkshire Council on or around 19 February 2021 on the Applicant’s behalf.
18. On 19 March 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 20 April 2021.

## Reasons for Decision

19. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
20. In regard to whether a sufficient period of notice was afforded, we noted that one interpretation of the 2016 Act may suggest that the notice period in the Notice was short by either one or two days (depending on interpretation of the time periods) but the Notice is entitled to be considered in terms of paragraph 10 of Schedule 1 of the 2020 Act. The application was not raised until 3.5 months after the service of the Notice and thus, if there is an error in the notice (on which we do not make a final view), it is cured by the temporary provision on errors in notices.
21. In regard to whether the Notice to Leave was in sufficient detail, Part 2 of the notice stated that it relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act; that the Applicant sought to live in the Property. Little explanation was provided in Part 3 of the notice. It was limited to: "THE LANDLORD IS MOVING BACK INTO THE PROPERTY". We considered that in the circumstances this was sufficient explanation. We were thus satisfied that the requirements of the 2016 Act (as temporarily amended) had been complied with in regard to the Notice to Leave in itself and as a pre-requisite to raising the application.
22. In regard to whether we were satisfied that the Applicant was entitled to rely upon Ground 4 in these circumstances, we were provided with an affidavit that, in short, explained that the Applicant needed a new home, had only the Property available to her, and lacked the finances to make alternative arrangements. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application. We were satisfied that the Applicant's reasons for seeking eviction were reasonable and we had no information before us to suggest that it was unreasonable to evict the Respondent. In the circumstances as before us, the Respondent has had over eight months notice of the Applicant's intention and had not sought to remove from the Property and we know of no special reason why she requires to reside at the Property specifically (for instance due to adaptation of the Property or its proximity to some institution or place of educational). In all the circumstances before us, we were satisfied that Ground 4 was well founded by the Applicant.
23. We noted the allegations of the Respondent failing to take steps to seek alternative accommodation, of incurring rent arrears, and of anti-social behaviour at the Property, but were not shown vouching for any of these points. They did not play a part in our considerations.
24. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for eviction.

## **Decision**

25. In all the circumstances, we make the decision to grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms.

## **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.**

**Joel Conn**

20 April 2021

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Legal Member/Chair

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Date