



**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/20/1616**

**Re: Property at 19 Argyll Path, Denny, Stirlingshire, FK6 5EN (“the Property”)**

**Parties:**

**Mrs Marion Patterson Stewart, c/o Your Move, 31a Northbridge Street Bathgate, Bathgate, West Lothian, EH42 4PJ (“the Applicant”)**

**Miss Claire Margaret Bouch, Miss Kelsey Marie Bouch, 19 Argyll Path, Denny, Stirlingshire, FK6 5EN (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision**

**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 1 November 2019.
2. The application was dated 29 July 2020 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave dated 3 March 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email on that date in accordance with the provisions of the PRT. The Notice relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act, being that “that the landlord intends to live in the let property”. The Notice

intimated that an application to the Tribunal would not be made before 3 April 2020.

4. The application was accompanied an affidavit from the Applicant explaining the circumstances why she now requires to return to the Property. In brief, it set out that she had intended to relocate within Scotland but her plans had not proceeded as she intended and she had now wished to move back to the area local to the Property and needed a permanent home there.
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Falkirk Council on or around 29 July 2020 was provided with the application.

### **The Hearing**

6. On 22 October 2020, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber at 14:00, conducted by the remote telephone conference call, there was an appearance by Kirstie Donnelly, solicitor, of BKF and Claire Bouch, the first named Respondent. Ms Bouch confirmed that she was appearing for both the Respondents.
7. Prior to the CMD, in correspondence on a connected application under Rule 111, the Applicant had stated that the Respondents had agreed to vacate the Property first by 15 October and then revised to 21 October 2020.
8. I sought clarification from the parties on their respective positions. The first named Respondent confirmed that she and her family were now in a new home but they had not yet completed clearance of the Property and return of the keys. Their intention to do so by 15 October, subsequently revised to 21 October 2020, had been further set back due to matters related to the current public health situation. They now expected to have handed back possession by 1 November 2020 at the latest. The first named Respondent did state her view that the second named Respondent, who was her 19 year old daughter (who was a student), was never supposed to be a party to the Tenancy. This position was rejected by the Applicant and the Tenancy agreement did bear the second named Respondent’s electronic signature.
9. The Applicant’s agent confirmed that the Applicant wished to bring this application to a conclusion and seek an order for eviction notwithstanding the hope that the Respondents would soon vacate voluntarily. The first named Respondent confirmed that the Respondents consented to the order for eviction in the circumstances. (For the purposes of concluding matters, the first named Respondent did not seek to pursue a defence on behalf of the second named Respondent regarding whether she was properly a party to the Tenancy.)
10. The application did not seek any order in respect of expenses and the Applicant’s agent confirmed that none were sought.

## Findings in Fact

11. On 1 November 2019, the Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 1 November 2019 (“the Tenancy”).
12. In terms of clause 4 of the PRT, the parties agreed that email could be used for communication of notices in terms of the Tenancy.
13. The Applicant had previously lived at the Property but had let it to the Respondents having relocated within Scotland. Prior to 3 March 2020, her plans had altered and she wished to return to the Property’s locale and required new permanent accommodation. The Applicant had no other suitable accommodation readily available to her in the area other than the Property.
14. Prior to 3 March 2020, the Applicant resolved to move back into the Property and to terminate the Tenancy for that reason.
15. On 3 March 2020, the Applicant’s letting agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice that the Applicant sought to return to live at the Property and that the Tenancy was being terminated on that basis.
16. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 3 April 2020.
17. The Applicant’s letting agent served a copy of the Notice to Leave on each of the Respondents on 3 March 2020 by email.
18. On 29 July 2020, 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.
19. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Falkirk Council on the Applicant’s behalf on or around 29 July 2020.
20. As of 22 October 2020, the Applicant retained her wish to reoccupy the Property.
21. On 25 September 2020, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 22 October 2020 and the details for dialling into the conference call.

## Reasons for Decision

22. The application was in terms of rule 109, being an order for eviction of a PRT. I was satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondents on correct notice.
23. Given that the emergency legislation relating to COVID-19 does not apply to a Notice of Leave served on 3 March 2020, ground 4 of Schedule 3 to the 2016 Act is a mandatory ground for the purposes of this application. That ground is mandatory if:

if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

Further, suitable evidence of this intention includes:

an affidavit stating that the landlord has that intention [to occupy the let property as the landlord's only or principal home for at least 3 months].

The affidavit provided satisfies the requirements of Ground 4 and the Respondents provided no dispute to the factual position set out in the affidavit and, indeed, consented to the order for eviction.

24. In all the circumstances before me, I was satisfied that Ground 4 was well founded by the Applicant.
25. 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. On the basis of the information held, I am thus satisfied to grant an order for eviction at this time.

## Decision

26. In all the circumstances, I grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 4 of Schedule 3 of that Act.

## **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.**

22 October 2020

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**Legal Member/Chair**

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**Date**