



**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/22/0624**

**Re: Property at Flat 2/1, 96 Braidholm Road, Giffnock, Glasgow, G46 6DF (“the Property”)**

**Parties:**

**Mr Steven Smith, 6 Marlborough Court, South Ayrshire, Ayr, KA7 1HE (“the Applicant”)**

**Dr Shazia Nawaz, Flat 2/1, 96 Braidholm Road, Giffnock, Glasgow, G46 6DF (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 2/1, 96 Braidholm Road, Giffnock, Glasgow, G46 6DF under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.**

**Background**

- 1. This is an application submitted to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) on 3 March 2022 by the**

Applicant's solicitor for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The application was accompanied by a copy Private Residential Tenancy Agreement between the parties commencing 6 October 2020, a Notice to Leave dated 10 November 2021 with an email from the Applicant also dated 10 November 2021 to the Respondent, an email dated 23 November 2021 from the Respondent to the Applicant and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to East Renfrewshire Council dated 2 March 2022.
3. On 12 April 2022 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 14 May 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 21 June 2022. The Respondent required to lodge written submissions by 4 June 2022. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer, Glasgow on 16 May 2022 and the Execution of Service was received by the Tribunal administration.
5. On 23 May 2022 the Tribunal received an email request from the Respondent to extend the time limit for lodging written submissions by one month and similarly seeking a postponement of the CMD by one month. The Respondent indicated she had a severe bout of flu, had not able to read through the application, that she needed a reasonable amount of time to prepare, organize and submit her written representations which she advised some of which had been partially prepared over a month ago in conjunction with the Citizens Advice Bureau and that she wanted to seek legal advice. A copy of the Respondent's request was sent to the Applicant's solicitor.
6. On 30 May 2022 the Applicant's solicitor emailed the Tribunal to advise the Applicant objected to the Respondent's request for a postponement. The basis of the objection was that the Applicant had advised the Respondent in June 2021 that he was looking to move back in to the Property, that the Respondent had received a formal Notice to Leave in November 2021, that the Respondent had had sufficient notice of the Applicant's intention to regain possession, that the Respondent had ignored the Applicant's requests to vacate and that a postponement would cause prolonged disruption to the Applicant while he waited to move back in to his property.
7. The Tribunal considered the Respondent's request as also relating to an action for recovery of rent arrears which the Applicant had also raised against the Respondent under reference number FTS/HPC/CV/22/0632. The Tribunal

extended the time for the Respondent to lodge written submissions for both actions to 14 June 2022. The Tribunal did not consider that the Respondent had shown cause to postpone the CMDs by one month. The request to postpone the CMDs by a month was accordingly refused. Parties were advised of the Tribunal's decision on 7 June 2022.

8. On 8 June 2022 the Respondent emailed to advise she was unwell and that her 6 year old son had also been unwell over the Platinum Jubilee weekend. She stated she would be well enough to take part in the CMDs on 21 June 2022, but due to her and her son's illness coupled by the fact that the representative from Citizen's Advice Bureau was on holiday she was unable to meet the new deadline to lodge written submissions on 14 June 2022. She further stated she had not had an opportunity to seek legal advice, that she was at an unfair disadvantage and accordingly sought reconsideration of the written representations submission deadline. She did not want details of her or her son's illness passed to the Applicant.
9. On 13 June 2022 the Tribunal emailed the Applicant's solicitor to advise they had received a further email from the Respondent seeking further time to lodge written submissions and enquiring whether it would cause their client any difficulty if the Tribunal extended the time further for the Respondent to lodge written submissions to 17 June 2022. They replied on 14 June 2022 to advise that would cause the Applicant no difficulty. The Respondent was advised that the time to lodge her written submissions had been extended again until 17 June 2022.
10. On 16 June 2022 the Respondent advised the Tribunal that due to her continuing ill-health she would not be able to provide written representations nor attend the CMDs on 21 June 2022. She provided a brief background to her current circumstances relating to her illness and her son. She made it clear she did not want any of that information passed to the Applicant's solicitors.
11. On 17 June 2022 the Applicant's solicitor sent a copy email from the Applicant dated 25 February 2022 setting out his desire to move back into the Property and the reasons behind that. A copy of this was sent to the Respondent.
12. The Tribunal considered the Respondent's email of 16 June 2022. With great reluctance, the Tribunal postponed the CMDs for both actions on 19 June 2022 and advised parties accordingly. The Tribunal assigned a new CMD to proceed on 7 July 2022 at 10 am. Parties were advised of the new time and date on 23 June 2022.

13. On 22 June 2022 the Tribunal issued a Notice of Direction to the parties to lodge certain documents by 4 July 2022. In terms of the Direction the Applicant was required to lodge an up to date rent statement in relation to the arrears action. The Respondent was required to lodge a soul and conscience certificate from her GP confirming her illnesses from 23 May 2022 with confirmation they would prevent her from reading the Tribunal papers or from taking part in the CMDs of 21 June 2022. Further the Respondent was also required to lodge her written submissions.
  
14. On 1 July 2022 the Respondent sent an email to the Tribunal with a copy letter from her GP dated 29 June 2022. She stated the letter would explain why she had not been able to liaise with the Citizens Advice Bureau. She again requested that details of her illness were not passed to the Applicant. The Tribunal noted the GP's letter was not given under soul and conscience. Further it did not otherwise comply with the Notice of Direction. It did not confirm her illnesses from 23 May 2022 nor confirm that these would prevent her from reading the papers or from taking part in the CMDs.
  
15. In response the Tribunal emailed the Respondent on 4 July 2022 referring the Respondent to the Notice of Direction and requesting she forward a soul and conscience certificate from her GP to the Tribunal. The letter from the GP made reference to "evidence". The Tribunal confirmed to the Respondent it had not assigned any hearing and as such there was no need for evidence and that the CMD would simply consider parties' positions and whether in all the circumstances a Hearing where evidence would be heard would be required. The Tribunal confirmed it expected her also to comply with the Direction in relation to the lodging of written submissions. The Tribunal noted the Respondent had had nearly 6 weeks to lodge these, that the Respondent's repeated failure to do so was unacceptable and that it was unfair to the Applicant not to have sight of these submissions ahead of the CMD on 7 July. The Tribunal pointed out to the Respondent she was clearly able to email the Tribunal and that it could see no reason why she could not set out her response to the application in an email to the Tribunal. The Tribunal reminded the Respondent that her email of 23 May 2022 stated that her submissions were already partially prepared and made it clear that it expected these submissions even if they were only partially prepared to be lodged in accordance with the Direction issued.
  
16. On 4 July 2022 the Respondent lodged a repairs' enforcement application with the Tribunal. Her covering email referred to the fact that this application was formulated with a representative from Citizen's Advice Bureau and that she was not in the habit of sending incomplete documentations but was doing so under duress. She referred to a Property Inspection Report from Cairn Letting agency dated May 2021 requesting that Applicant attend to various repairs identified in

the report. She stated the Landlord has failed to undertake the majority of the repairs requested. This application was acknowledged on 6 July 2022. The Tribunal members did not have sight of the repairs enforcement application which was sent to the appropriate team for processing.

17. The Respondent's email of 4 July 2022 also explained she was not physically disabled and that although she had requested her GP give her a soul and conscience certificate her GP had advised "*he would not be writing a letter of this type but just a normal letter*". The Respondent did not feel she was to blame for her failure to lodge a soul and conscience certificate and stated she wanted to take part in the CMD assigned for 7 July 2022. She then referred to an alleged incident on 11 February 2022 when the Applicant allegedly swore at her and which she reported to a Housing Officer at East Renfrewshire Council and to a text dated 21 February 2022 a copy of which she enclosed in which the Applicant stated "*Turns you you're not even a doctor. My lawyer checked, says you're a fraud. That's jail time, exactly what you deserve. When you moving out of my flat?*" She stated this text had been reported to the Police. Finally she stated "*Please note, I wholly challenge the Notice to Quit that was issued to me in November 2021. I will provide evidence as to why this is at the Case Management Discussion when it takes place*". A copy of the Respondent's email was sent to the Applicant's solicitor on the morning of 7 July 2022.

### **Case Management Discussion**

18. The Tribunal proceeded with a Case Management Discussion on 7 July 2022 by way of teleconference. The Applicant's solicitor Miss MacLeod appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 17 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice of and was aware the CMD was proceeding on 7 July 2022 and accordingly proceeded with the CMD in her absence. The application was heard with the application for recovery of arrears under application HPC/CV/22/0632.
19. The Tribunal had before it the Private Residential Tenancy Agreement between the parties commencing on 6 October 2020, a Notice to Leave dated 10 November 2021 with an email from the Applicant also dated 10 November 2021 to the Respondent, an email dated 23 November 2021 from the Respondent to the Applicant, an email dated 25 February 2022 from the Applicant to his solicitor explaining he needed to move back to the Property for personal reasons, a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to East Renfrewshire Council dated 2 March 2022 and the voluminous email correspondence referred to in paragraphs 5-17 above. The Tribunal noted the content of these documents.

20. The Tribunal considered the application for arrears first of all and heard submissions from Miss McLeod. Before making its decision in relation to the arrears case, the Tribunal considered the application for eviction. Miss MacLeod moved the Tribunal to grant an Order for repossession of the Property. She reiterated the terms of the Applicant's email of 25 February 2022, that the Applicant had owned the Property since 2007 and had lived there between 2021 – 2020 before letting it out to another tenant and then to the Respondent in October 2020. In June 2021 his personal circumstances changed and he advised the Respondent he would need to move back into the Property. The Respondent agreed that she would move out. On the basis that she would honour that, the Applicant was willing to give the Respondent time to find alternative accommodation. By November 2021 the Applicant had had no further correspondence from the Respondent that she was any further forward in her search for another property. Accordingly the Applicant sent her a Notice to Leave by email on 10 November 2021 asking that she leave the Property by 11 February 2022 on the basis he wanted to move into the Property due to a change in personal circumstances. The Respondent contacted the Applicant on 11 February 2022 to advise she would not be moving out of the Property. Miss MacLeod advised the Applicant wanted to be nearer his four children who live in Glasgow. The Tribunal noted from his email of 25 February 2022 that the Applicant's relationship had broken down and that he was currently residing in rented accommodation in Ayr.
21. The Tribunal questioned Miss MacLeod about the text message her client had sent to the Respondent on 21 February 2022 which had been produced by the Respondent. She explained that as she had only had sight of this that morning she had not been able to speak to her client about it. The Tribunal also asked Miss MacLeod whether she was aware the Respondent had a six year old son that lived in the Property with her. Miss MacLeod advised there was no correspondence between her client and the Respondent as to who else lived in the Property. She was accordingly not aware that there were any children in the Property. She believed the Respondent may be in employment as rent payments had been received direct from the Respondent as opposed to through the benefit system. She believed the Respondent had not advised her client as to why she was not now intending to move from the Property and that no further communication had been received from the Respondent since her email of 23 November 2021 although she had contacted him on 11 February 2021 to advise she was not moving out. The Tribunal noted that her email of 23 November 2021 advised she had shoulder pain and would be in contact with the Applicant when she had recovered.
22. The Tribunal referred to the Respondent's email of 4 July 2022 in which she stated she wished to challenge the Notice to Leave. Although the Respondent had not set out the basis of her challenge, the Tribunal questioned Miss MacLeod as to the validity of the Notice. The Tribunal had considered the Notice to Leave and queried whether sufficient notice had been given to the

Respondent on the basis that the Applicant had sent the Notice by email on 10 November 2021 in terms of Clause 4 of the tenancy agreement between the parties. The Tribunal pointed out that the assumption was that that Notice would be received by the Respondent 48 hours after it was sent, namely on 12 November 2021. The Tribunal questioned whether the date on the Notice inserted at part 4 of the Notice, namely 11 February 2022, being the date the Respondent was to leave the Property, was sufficient bearing in mind the required notice period for Ground 4 (Landlord wants to live in the Property) was three months.

23. Miss MacLeod pointed out her client had served the Notice himself. However the Notice could be relied on by her client as being valid with reference to paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") which in essence stated that where a notice erroneously states a wrong date, given the extended notice periods under the 2020 Act, the Tribunal can substitute the correct date in the notice. As long as the application in this case was made after 12 February 2022 which should have been the date inserted on the Notice to Leave, the Tribunal could treat the notice as valid. She submitted in this case the application had been made nearly a month later, on 3 March 2022 and that the Tribunal could treat the notice as having the correct date.

24. The Tribunal adjourned at 10.45am, reconvening just before 11am and concluding both CMDs at about 11.05am.

### **Findings in Fact**

25. The Applicant is the heritable proprietor of the Property. He previously lived in the Property from July 2012 - May 2020. He leased the Property to a third party and then to the Respondent in October 2020.

26. The Applicant and the Respondent entered into Private Residential Tenancy Agreement for the Property commencing 6 October 2020. In terms of clause 4 of the tenancy agreement, parties agreed that all communication including the service of notices could be made by email communication.

27. On or about June 2021 the Applicant had a change of personal circumstances. His relationship had broken down. In June 2021 he advised the Respondent he needed to move back to the Property. He was prepared to give the Respondent an opportunity to find alternative accommodation.

28. By November 2021 the Respondent was still resident in the Property. The Applicant served a Notice to Leave on the Respondent by email on 10

November 2021. The Applicant stated in the Notice that he wished to move into the Property. He set out his reasons for doing so and referred to his previous residence in the Property from July 2012 to May 2020 and that due to a change in his personal circumstances he needed to move back to the Property. At part 4 of the Notice the Applicant stated that proceedings against the Respondent would not be commenced until after 11 February 2022.

29. The Respondent emailed the Applicant on 23 November 2020 to advise she had been unable to move out due to debilitating shoulder pain, that she would have to wait until she had fully recovered and that she would write to the Applicant in more depth. The Respondent did not contact the Applicant following from that email.
30. The Respondent contacted the Applicant on 11 February 2022 to advise she would not be moving from the Property. She did not advise the Applicant why she was not intending to vacate the Property.
31. The Applicant texted the Respondent on 21 February 2022 and stated "*Turns you you're not even a doctor. My lawyer checked, says you're a fraud. That's jail time, exactly what you deserve. When you moving out of my flat?*". The Respondent did not respond to the Applicant's text.
32. The Respondent continues to reside in the Property.
33. The Applicant lives in rented accommodation in Ayr.
34. The Applicant wants to return to live in the Property following a relationship breakdown and to be nearer to his 4 children who live in Glasgow.
35. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on East Renfrewshire Council on 2 March 2022 by the Applicant's solicitor.

### **Findings in Fact and Law**

36. The Notice to Leave dated 10 November 2021 at part 4 erroneously referred to 11 February 2022. The correct date that should have been inserted at part 4 of the Notice to Leave was 12 February 2022. The Notice to Leave is valid in terms of Section 62 of the 2016 Act and paragraph 10 of schedule 1 of the 2020 Act.



37. The Applicant has established a ground of eviction under Ground 4 of schedule 3 of the 2016 Act. In all the circumstances it is reasonable to evict in terms of Section 51 of the 2016 Act.

### **Relevant Legislation**

38. The Tribunal considered the terms of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020.

39. Section 51 (1) of the 2016 Act provides the First-tier 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.

Section 51 (2) states the provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies and that it is reasonable to evict.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

### **Section 52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3), or (b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2) (b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

#### **54 Restriction on applying during the notice period**

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

**(2) The relevant period in relation to a notice to leave— (a) begins on the day the tenant receives the notice to leave from the landlord, and**

**(b) in the case of a notice served before 3 October 2020 expires on the day falling—**

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

**(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—**

(i) 28 days after it begins if subsection (3B) applies,

**(ii) three months after it begins if subsection (3C) applies,**

(iii) six months after it begins if neither subsection (3B) nor (3C) applies.

Section 54 (3C) applies if—

**(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—**

**(i) that the landlord intends to live in the let property, [ground 4]**

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

#### **62 Meaning of notice to leave and stated eviction ground**

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

**(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.**

**Ground 4 in Schedule 3** of the Act states that -

(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 sub-paragraph (1) applies if

(a) the landlord intends to occupy the let property as the landlord'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 those facts.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

### **Coronavirus (Scotland) Act 2020, Schedule 1, paragraph 10- Errors in notices**

(1) Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

**(a) the notice is not invalid by reason of that error, but**

**(b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.**

**(2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.**

**(3) This paragraph applies to—**

**(a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,**

(b) a notice served on a tenant under section 14(2)(a) or 36(2)(a) of the Housing (Scotland) Act 2001,

(c) a notice served on a tenant under section 19 or 33(1)(d) of the Housing (Scotland) Act 1988,

(d) a notice served on a tenant in accordance with section 112(1) of the Rent (Scotland) Act 1984.

### **Reasons for Decision**

40. The Tribunal considered the issues set out in the application together with the documents lodged in support. Despite the Respondent's failure to appear at the CMD the Tribunal considered the Respondent's emails as set out in paragraphs 5 -17 above and in particular her email of 4 July 2022. It treated that as her written submission to the application both with reference to the Notice of Direction and to the Tribunal's email of 4 July 2022 in which the Tribunal

confirmed she had had over 6 weeks to respond and that the Tribunal expected her written submission to be lodged by 4 July in terms of the Direction. Further the Tribunal considered the oral submissions made by the Applicant's solicitor Miss MacLeod. The Tribunal also noted the content of the email dated 25 February 2022 from the Applicant in which he set out his reasons to move back to the Property namely that he had contacted the Respondent to advise her in June 2021 that following a relationship breakdown he wanted to move back to the Property, that he was living in rented accommodation in Ayr and wanted to move back to the Property to be in Glasgow where his four children lived. The Tribunal accepted the veracity of the Applicant's email the contents of which had been repeated by Miss MacLeod in her submissions. The Tribunal accepted the submissions of Miss MacLeod as to the Applicant's reasons for wanting to move back to the Property. The Tribunal accepted that the Applicant had established he had a ground to evict under Ground 4 of schedule 3 of the 2016 Act.

41. The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under schedule 1, paragraphs 3 and 4. The Notice to Leave was served by email on the Respondent on 10 November 2021 and thus the notice period stated in Section 54 (2) (c) (ii) of 3 months applies. The Tribunal noted that Clause 4 of the tenancy agreement allowed for service by email on the Respondent.
42. Despite the fact that the Applicant had miscalculated the notice period on the Notice to Leave by falling short by one day, the Tribunal considered that in terms of schedule 1, paragraph 10 of the 2020 Act it was entitled to find the Notice to Leave was not invalid and that it could be relied upon by the Applicant. The Applicant did not seek to rely on the Notice until after the date that the Notice could have been relied upon had it been correctly completed at part 4 with the correct date inserted. In this case the Applicant did not rely upon the Notice until 3 March 2022 when the application was submitted to the Tribunal. Although the date stated on the Notice was wrong the Tribunal can substitute the correct date on the Notice and check whether the application was competently made if the Notice were read as containing the correct date.
43. The Tribunal noted the Respondent stated in her email of 4 July that she wanted to (sic) "*wholly challenge the Notice to Quit that was issued to me in November 2021. I will provide evidence as to why this is at the Case Management Discussion when it takes place*". Whether the Notice to Leave is valid is not a question of evidence. It is a question of law. The Respondent had given no indication as to the basis of her challenge as to why in law the Notice to Leave could be challenged. The Tribunal examined the Notice to Leave against the statutory requirements in the 2016 Act and the 2020 Act. The Tribunal was satisfied that the Notice to Leave met the requirements set out in Section 64 of the 2016 Act when read alongside paragraph 10 of schedule 1 of the 2020 Act and was valid.

44. As well as being satisfied that a ground to evict has been established the Tribunal has to be satisfied that it is reasonable to evict in terms of Section 51(2) of the 2016 Act. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to live in the Property when he obtained possession of it. The Applicant was having to pay for rented accommodation when he wanted to move to the Property. The Applicant was financially disadvantaged by continuing to pay rent. It was reasonable that he wanted to move back into the Property. He also wanted to be nearer his children.

45. On the other hand, the Tribunal noted the Respondent had been first advised by the Applicant in June 2021 that he wanted to move back into the Property. Despite her email to him of 23 November 2021 in which she advised she would be in contact with the Applicant, she did not do so. Despite her contacting the Applicant on 11 February 2022, she did not disclose any reason for her refusal to vacate the Property. Despite her numerous emails to the Tribunal, the Respondent did not disclose any defence to the action or reason why she had not moved out of the Property 13 months after the Applicant advised her he wanted to move back to the Property. The Tribunal considered the alleged incident of 11 February 2022 as irrelevant. Although the Applicant's email of 23 February 2022 had an unfortunate turn of phrase, it showed the Applicant was increasingly frustrated. The Respondent was clearly articulate. The Tribunal formed the impression that had the Respondent anything further to add which could have assisted the Tribunal in its assessment of her predicament, she would have advised and emailed the Tribunal. She had engaged in detailed email correspondence with the Tribunal, but had never disclosed her reasons for not moving. The Tribunal considered she had had more than sufficient time to find alternative accommodation. The Respondent is believed to work. Her email correspondence indicated she had a six year old son who lived with her. Mention was made in her email of 4 July 2022 that she had been in contact with a Housing Officer from East Renfrewshire Council after the Applicant had allegedly sworn at her on 11 February 2022. The Respondent had taken the sensible step in seeking advice from the Citizens Advice Bureau referred to throughout her email correspondence with the Tribunal. The Tribunal formed the impression that the Respondent would continue to seek the support of both the Council and Citizens Advice Bureau. However her occupation of the Property was to the detriment of the Applicant who was entitled to live there. The Tribunal noted the requisite S11 Notice had been served on East Renfrewshire Council by the Applicant's solicitor. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

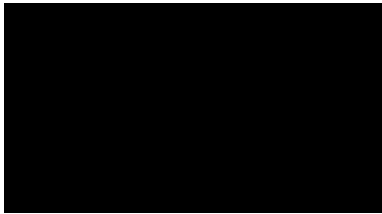
46. In the circumstances the Tribunal considered that in terms of Ground 4 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

## **Decision**

47. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.



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Legal Chair

13 July 2022

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Date