



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016.**

Chamber Ref: FTS/HPC/EV/22/4453

Re: Property at 47 Petrel Way, Dunfermline, KY11 8GY (“the Property”)

Parties:

**Mr Connor Auld, Mrs Kelly Auld, 11 Cressbrook Street, Clinton, Queensland,
4680, Australia (“the Applicant”)**

Mr Craig Dobbie, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

- 1. Grants an Eviction Order against the Respondent and,**
- 2. Dispenses on cause shown with the requirement for a Charge in terms of
Section 216(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007**

Introduction.

This Hearing concerned an Application under application for an Eviction order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 The hearing took place by teleconference.

- 1. Attendance and Representation.**

The Applicant was represented by Gillian Matthew, Kirkwood, France & Co, 16 Royal Exchange Square, Glasgow, G1 3AG.

The Respondent was not present. He was served by Advertisement. The last contact between parties was by email on or around 15th September 2022. This remains the position at this Case Management Discussion.

2. Preliminary Matters/Background

- a. This case called previously as a Case Management Discussion and was continued to this date to allow the Applicant's representative to lodge written submissions. By email of 1st June 2023 the Applicant's representative lodged with the Tribunal written submissions on the Applicant's title and interest including the landlord contract.
- b. By written submission the position of the Applicant was that on 26 November 2019, the Applicants initially entered into a lease agreement with Northwood (Dundee) Limited (Northwood) for the Property called a Guaranteed Rent Agreement. Northwood granted a sub-lease to the Respondent by way of a Private Residential Tenancy which commenced on 8 May 2020. The submission was further that following the expiry of the Guaranteed Rent Agreement on 25 November 2020 as no notice to quit was issued by either the Applicants or Northwood the Guaranteed Rent Agreement continued under the operation of Tacit Relocation for a further period of 12 months from 26 November 2020 to 25 November 2021. The Applicants and Northwood entered into new Guaranteed Rent Agreement for the Property and this then commenced on 26 November 2021 for a further 12 months.
- c. The Applicants and Northwood renounced this agreements early on 1st June 2022 and Northwood renounced their rights as Tenants in doing so.
- d. The submission further was that as at 1 June 2022, the Applicants therefore "stepped into the shoes" of Northwood as landlords of the Sublease and the Sublease continued under the same terms. The Applicants thereafter engaged Northwood to act as their letting agents in relation to the management of the Property. On 11 October 2022, the Notice to Leave that forms the basis of this application was issued on the instructions of the Applicants as landlords who had by virtue of the valid sublease title and interest to do so.

- e. The submission was that in terms of Section 46 of the Private Housing (Tenancies) (Scotland) Act 2016 this applied to circumstances where a private residential tenant is given permission by a landlord to sublet a property and can be distinguished from the circumstances here and is exempt from the provision in terms of Section 46(3).
- f. In terms of this preliminary matter the Tribunal determined that on the further submissions and documents lodged the Applicants therefore have title and interest to pursue this application.
- g. There were no other preliminary matters raised.

3. Case Management Discussion.

- a. The Applicant's representative set out that the Applicant was seeking an Eviction order on the basis of Ground 10, schedule 3 of 2016 Act. The Applicant's representative relied on the application. It had been previously submitted that the Applicants reside in Australia, are in their thirties and have retained an interest in the property to live in it in due course. The Applicant's representative said that the Applicant's became aware in August 2022 when neighbours alerted them that removal vans and a skip were present with the Respondent saying to neighbours he was going to vacate. Further discussions between the Respondent and neighbours confirmed same. Northwood Dundee made enquiries and the council tax notification arose. The Respondent indicated to Fife Council of his intention to leave. Northwood Dundee in response contacted the Respondent by email and these emails are lodged with the Respondent saying he will be handing keys back in September 2022 and he never was in contact with the Applicants or their representatives again.
- b. The Applicants believe the Respondent has abandoned the property. Northwood Dundee entered the property to check the condition following the letter from Fife Council and the property was uninhabited with no furniture, no food, and a set of pet rats abandoned. The property was in a poor state, unkempt, dirty and infested with flies. Every week Northwood Dundee have visited the outside of the property and it remains unchanged with the garden unkempt, the grass overgrown, no car outside and the curtains drawn. . The submission was that the Respondent is not occupying the property and Ground 10 of Schedule 3 the Private Housing (Tenancies) (Scotland) Act 2016 applies.

- c. Further the Applicant's representative submitted it was reasonable that an order be granted and moved in terms of 216(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to have the Charge for Removing dispensed with on cause shown given the period of time which has elapsed and the non-cooperation and obstruction of the Respondent.

1. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had been served by Advertisement and had not challenged the application by written representations or attendance. The earlier CMD had been continued by the Tribunal to seek further submissions and documents on a preliminary matter in fairness to the Respondent . Proceeding in the absence of the Respondent met the Overriding objective in the Tribunal's view.**
- 2. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property.**
- 3. The Tribunal was satisfied that the Applicant's following a Renunciation of a Guaranteed Rent Agreement with their letting agents on 1st June 2022 that they became entitled to raise this application under the terms of the Private Residential Tenancy dated 8th May 2020.**
- 4. The Tribunal was satisfied that the relevant tenancy was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and as stated was dated 8th May 2020.**
- 5. The Applicant was relying on Ground 10, , under Schedule 3, of the 2016 Act only to make the Application, that**

In terms of Ground 10, Part 3 of Schedule 3 of the 2016 Act, the First-tier Tribunal may find that the ground applies if—

- 1. (a) the let property is not being occupied as the only or principal home of:***
 - 1. (i) the tenant, or***
 - 2. (ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and***
- 2. (b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.***
- 3. (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.***

- 6. The Tribunal found that the Respondent was not occupying the property as his principal home.**

7. A valid Notice to Leave had been served on the Respondent by Sheriff Officer.
8. Notice to the Local Authority had been given.
9. The Tribunal found that the Respondent was single, had lived alone at the property and had abandoned the property in September 2022.
10. the Tribunal was satisfied it was reasonable to grant the Order.
11. Accordingly in terms of Section 51 of the 2016 Act the Tribunal granted an Order against the Respondent for Eviction.
12. The Tribunal also dispenses on cause shown with the requirement for a Charge in terms of Section 216(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 on the basis the property is not occupied and no contact of any kind has been made by the Respondent to the Applicants or their agents.

Reasons for the Decision

The Tribunal heard evidence from the Applicant 's representatives over 2 Case Management Discussions which satisfied the Tribunal that Ground 10 could be established. Documentation also lodged showed that the Respondent had indicated to the local authority of his intention not to occupy the property as his principal home. The Tribunal noted the Respondent had not been in contact with the Respondent and appeared not to be residing at the property or maintaining same given that the applicants agents had been continuing to have to drive by the property to check on matters. On the basis of the up to date submissions, the evidence heard and the evidence lodged in the Application the Tribunal determined it was appropriate to grant an Order for Eviction. The Tribunal also determined it was reasonable to do so in all the circumstances and on cause shown as the property had been abandoned for a significant period determined that the Charge be dispensed with in terms of Section 216(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

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.

K Kirk

20/07/2023

Legal Member/Chair

Date

