



**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/21/0039**

**Re: Property at Ashbank, Burnfoot Farm Cottages, Ashkirk, Selkirk, TD7 4PH (“the Property”)**

**Parties:**

**Ms Pauline McDermott Nee McGregor, Culdaremore, Ancaster Road, Callander, FK17 8EL (“the Applicant”)**

**Miss Wendy Wilson, Mr Mark Jon Hallworth, Ashbank, Burnfoot Farm Cottages, Ashkirk, Selkirk, TD7 4PH (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 4 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.**

- Background
- 1. An application dated 6 January 2021 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to move back into the Property to occupy same as her principal home, being Ground 4 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Hearing
2. A Hearing took place on 1 March 2021, by way of tele-conference. The Applicant was present and represented by Nicola Caldwell of TC Young solicitors. The Respondents were personally present and represented themselves.
  3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 16 November 2018. The Applicant intended to move back into the Property to occupy as her principal home and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 4 of Schedule 3 to the 2016 Act, on 25 September 2020. Said Notice required vacant possession on or before 28 December 2021. The Respondents had failed to remove from the Property.
  4. The following documents were lodged alongside the application:
    - (i) Copy Private Residential Tenancy Agreement
    - (ii) Copy Notice to Leave
    - (iii) Proof of service of the Notice to Leave by email
    - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
    - (v) Affidavit of Applicant dated 9 February 2021
  5. The Respondents lodged written representations dated 11 February 2021, setting out their position to the Application.
  6. The Applicant's representative submitted that the reasons for the Applicant moving back into the Property were set out in her affidavit. The reasons as summarised, are:
    - (i) To be nearer her daughter, partner and granddaughter who reside in Melrose. Her daughter is expecting another child in May 2021;
    - (ii) To provide additional support and care to her elderly parents;
    - (iii) To spend her retirement with her husband in the Property. Her husband has retired and she intends to retire in 2021;
    - (iv) Her late husband is buried in the local cemetery;
    - (v) To be nearer to her friends;
    - (vi) The smaller garden at the Property is more manageable for her and her husband, compared to that of the Property she has been residing in, in Callander.
  7. It was submitted that the Applicant had first notified the Respondents of her intention to move back into the Property in June 2020. A Notice to Leave had been served. However, upon taking legal advice she was notified that there was an error in said notice, and a second Notice to Leave was issued in September 2020, and that Notice to Leave forms the basis of this Application. It was submitted that the relationship between the parties had broken down. It was not in the interests of either party for the Respondents to remain in the Property.

8. The Applicant had sold her Property in Callander and was now homeless. She was residing between family and friends, which is not ideal in the midst of a pandemic and when she should be shielding due to ill health. She has been forced to do so due to the Respondents' failure to remove from the Property following service of the Notice to Leave.
9. The Applicant owns 5 properties. This Property has the best garden of all of them and has a garage next to it for storage. Aside from the house next door (also owned by the Applicant) the remaining properties are 1 or 2 bedroom flats. All of the properties are currently tenanted. This Property is the one in which the Applicant wishes to live out her retirement with her husband. She had previously suggested she may carry out some renovations and install an "Eco-Pod" in the garden to rent out as additional income, however she has since decided not to go ahead with this idea due to ill-health and financial factors.
10. Miss Wilson mainly spoke on behalf of the Respondents. She submitted that the Applicant has not been truthful in her dealings with them. They were served with a Notice to Leave in June. The Applicant had visited the Property in May and hadn't said anything to them about her plans. This was described as "duplicitous." They were not told why the first Notice was incorrect and why the second Notice had to be served. They also questioned why the Applicant did not market her property until September 2020, when she had first served a Notice to Leave in June 2020. Miss Wilson submitted that she did not believe that the Applicant had in fact sold her property in Callander. When asked to explain what basis she had for saying so, Miss Wilson advised that she had no evidence but this was "a vibe." Miss Wilson advised that she had taken legal advice regarding the Notice to Leave and had been told to stay in the property and not move until a decision had been made by the Tribunal.
11. Miss Wilson submitted that it would not be reasonable to evict her and Mr Hallworth. They were in the midst of a global pandemic. It could never be reasonable to evict someone under these circumstances. The property next door, also owned by the Applicant, was in a better condition and had a conservatory built. She questioned why the Applicant wouldn't want to move in there? It was submitted that they had been good tenants, who had been treated badly by the Applicant.
12. When asked what steps they had taken to source alternative accommodation since June 2020, Miss Wilson advised that they had looked online, but had not found anywhere suitable for their needs. Most landlords were asking for two months' rent up front. The housing market is very limited due to the pandemic. They are trying to rebuild their business which they started before they moved into the Property. Mr Hallworth suffers from an anxiety disorder. He requires to live in a property which is peaceful and away from other people, due to an assault he suffered from a neighbour a few years ago.
13. It was submitted that they had wanted to agree a compromise with the Applicant when the first Notice to Leave was served in June 2020. They had suggested

that they could agree a date by which they could leave (which was after the date specified in the Notice to Leave) but the Applicant wouldn't agree to this. It was submitted that had she been cooperative in this agreement, they may have been out of the property before now. They described the Applicant's conduct as "arrogant."

14. It was submitted that the Applicant had been acting in an intimidating manner by parking in the driveway to access the garage for storage of items without asking their permission. It was confirmed that she had not accessed the Property without permission. It was submitted that they were being "picked on." They have reported maintenance issues which the Applicant didn't like them doing.
15. Miss Wilson advised that she has recently been diagnosed with transverse myelitis. She submitted that this has been triggered by the stress caused by the attempts by the Applicant to evict her.
16. Mr Hallworth advised that he has been very happy in the Property, notwithstanding the difficulties with the Applicant. They get on well with the neighbour.

- Findings in Fact

17. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 16 November 2018;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant intends to move into the Property to occupy as her principal home;
- (iv) The Applicant has served a Notice to Leave on the Respondents on the basis of Ground 4 of Schedule 3 to the 2016 Act;
- (v) The Applicant has provided an affidavit setting out her intention to reside in the Property as her principal home and her reasons for same.

- Reasons for Decision

18. The Tribunal was satisfied that the terms of Ground 4 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to reside in the Property as her only or principal home for a period of at least three months. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.
19. The Tribunal was also satisfied that it was reasonable that the repossession order be granted as sought.

20. It was noted that the Applicant had sold her property in Callander and was now homeless, relying on family and friends to accommodate her for short periods at a time until she could move back into the Property currently occupied by the Respondents. The Tribunal was satisfied on the basis of the affidavit and submissions made by the Applicant as regards the sale of the Property. Whilst the Respondent had suggested that the Applicant was not being truthful, they had no basis for making such a statement. Miss Wilson suggested she had “a vibe” which is not sufficient to convince a Tribunal that a statement made in an affidavit is untrue.
21. It was noted by the Tribunal that Miss Wilson suggested that had the Applicant agreed to sit down and discuss with them a suitable later agreed date by which they could leave, then they could have been out of the Property by now. They described the Applicant as “arrogant” in refusing to agree to such a request. However, it was clear to the Tribunal that the Applicant was under no obligation to agree to such a request, and had given proper notice under the Notice to Leave itself. The Tribunal was not satisfied that Miss Wilson nor Mr Hallworth had taken reasonable steps to obtain alternative accommodation in the eight months since the initial Notice to Leave had been served. It seemed clear that they considered they could have moved out before now, but did not do so due to their demands not being met by the Applicant and them feeling aggrieved at same.
22. The Tribunal did not find Miss Wilson particularly credible in her evidence. When asked by the Tribunal to give examples of the ill-treatment they claimed they had received by the Applicant, reference was made to the Applicant sending an email addressed to “dear both” as opposed to using their names. She also referred to the Applicant sending out an end of tenancy letter following service of the Notice to Leave, when Miss Wilson said she had already made it clear they would not be moving. She suggested that this was unreasonable behaviour on the part of the Applicant and described it as “bullying.” She referred to having been discriminated against, but could not specify how they had experienced discrimination, when asked to do so by the Tribunal. The Tribunal was not persuaded that there had been unreasonable behaviour on the part of the Applicant in her dealings with the Respondents.
23. Miss Wilson referred to being “picked on” and when asked what she meant, she said that there was no reason why they should be the ones to move, as opposed to the Applicant’s other tenants. It had been explained that this Property was the preferred and most suitable property for the Applicant to spend her retirement. Miss Wilson did not accept this.
24. It was clear to the Tribunal that Miss Wilson and Mr Hallworth felt upset and angry at being asked to remove from the Property. However, the Tribunal was not satisfied that they had suffered unfair treatment by the Applicant. Further, whilst submissions were made stating that both Respondents suffered from ill health, no medical evidence was lodged in this regard. If this is indeed the case, the Tribunal considers that this could result in them being allocated appropriate housing in the social rented sector suited to their respective needs

and without the need for payment of a sizeable security deposit. The Respondents made no submissions as to steps taken to source accommodation in the social rented sector. The Tribunal was not persuaded that the Respondents had taken reasonable steps to source alternative accommodation since June 2020 when they were advised that the Applicant wished to repossess the Property and move back in herself. The Tribunal considered that the Applicant had acted reasonably in her service of the Notice in June, then rectifying the error with service of a further Notice in September giving the Respondents an even longer period of time to remove from the Property. The Tribunal was satisfied with the reasoning given by the Applicant in her submissions and her affidavit as to why she wished to move back into the Property. The Tribunal was satisfied that under the circumstances, it is reasonable to grant the order sought.

- Decision

25. The Tribunal granted an order against the Respondents for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 4 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**

**Fiona Watson**

**Legal Member/Chair**

**Date: 1 March 2021**