



**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/21/1909**

**Re: Property at 20 Gannochie Terrace, Dundee, DD4 7LZ (“the Property”)**

**Parties:**

**Mr Robbie Webster, C/O 18 Strathaven Terrace, Dundee, DD4 0JA (“the Applicant”)**

**Miss Genna Dunn, 20 Gannochie Terrace, Dundee, DD4 7LZ (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Frances Wood (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 20 Gannochie Terrace, Dundee, DD4 7LZ 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 furth 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. By application dated 29 July 2021, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the

Regulations”). The basis of the Application was that the Applicant required to live in the Property in terms of Ground 4, Schedule 3 of the 2016 Act.

2. A Case Management Discussion (“CMD”) proceeded on 29 November 2021. Both parties appeared on their own behalf. The Tribunal decided that evidence should be heard and accordingly continued the case to a hearing. The issues to be determined at the hearing were that the Respondent did not accept the Applicant intended to occupy the Property and believed that his intention was to sell it. She also considered it was not reasonable that an order for eviction be granted having regard to her assertion that the Applicant advised her that she would be able to reside in the property for as long as she desired, that she has a child she has now placed at a local school, that she is studying at University locally and that she has had difficulty in sourcing affordable alternative accommodation. The Tribunal issued a Note on the CMD and a Notice of Direction regarding witnesses and productions to both parties by email on 2 November 2021.

### **The Hearing**

3. On the morning of 13 December 2021 the Clerk to the Tribunal forwarded an email timed at 8.23pm dated 12 December 2021 from the Respondent enquiring if a Hearing had been fixed. The Clerk replied at 8.15 am on 13 December confirming the Hearing was proceeding at 10 am that morning.
4. The Tribunal proceeded to a Hearing on 13 December 2021. Both parties appeared on their own behalf.
5. The Tribunal had before it and considered the Private Residential Tenancy Agreement (although headed Short Assured Tenancy) dated 1 April 2018 between the parties, a Notice to Leave dated 17 November 2020 with signed Recorded Delivery proof of delivery, a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Dundee City Council dated 29 July 2021, the Respondent’s written response to the application dated 13 October 2021, emails dated 2 November 2021 from the Tribunal administration to both parties providing a copy of the CMD Note and the Notice of Direction, letters dated 4 November 2021 to parties advising a Hearing had been assigned for 13 December 2021, an email dated 9 November 2021 from Respondent advising she had broken her wrist and that she may take longer to respond to the Tribunal, an email dated 18 November 2021 from the Respondent with text messages between parties, an email dated 26 November 2021 from the Applicant with written submissions, text messages between the parties and an affidavit sworn before a Notary Public dated 24 November 2021 that he was homeless, did not intend to sell the Property and that the Respondent had offered to buy the Property. The Tribunal also had copy of the CMD Note before it.
6. The Applicant confirmed the position he had set out in his response to the Direction that he would lead evidence from his mother and a friend. His mother Gillian Webster then proceeded to give evidence. She advised that she would never allow the Applicant to sell the Property as there was a huge

sentimental value attached to it, the Property being the last home the Applicant had with his father before he died. The Respondent had offered to buy the Property, but it was made clear to her the Property was not for sale. She had no idea why the Respondent was saying her son would sell the Property. Mrs Webster went on to explain that after the Applicant's father had died she had to fight with the executors not to sell the Property. After he inherited the Property they had spent over £10000 carrying out refurbishment works.

7. Mrs Webster gave evidence of the Applicant's current living arrangements. He and his partner lived with her when they couldn't sleep at friends' houses. They slept on the sofa. The arrangement was not ideal. She felt she has no privacy in her own home. She had serious health issues including irritable bowel disease and bladder injuries caused by a mesh implant. Her house was packed full of the Applicant's possessions and possessions from the Applicant's grandmother and father. It was cramped. Her benefits had been cut by £68 per week because the Applicant stayed with her at times. She herself had taken advice from Dundee City Council and Shelter to the effect that the Applicant could live in the Property as he could not go down the homelessness route being a Landlord.
8. She went onto explain that it was not disputed that when the tenancy agreement was entered into, the Applicant's intention was that the Respondent could live at the Property at least while he was at Glasgow University and probably beyond that as he never intended to return to live in Dundee. Mrs Webster also said that she had been instrumental in Miss Dunn taking up the tenancy, as there had been a connection between them through a friend. However the pandemic had changed that and the Applicant found himself in Glasgow with no money, not being able to pay rent on a property there as the Respondent was not paying rent to him for the let Property, on which he depended for income. Miss Dunn had fallen into arrears and he had no choice therefore but to move back to Dundee.
9. At that point at just before 10.30 am the Respondent said something indecipherable and went off the Conference Call. The Tribunal Clerk called the Respondent but her phone was not switched on. The Clerk also emailed the Respondent at 10.30am to ask whether she was able to re-join the call or whether she had line problems. The Tribunal waited about 10 minutes or so for the Respondent to re-join the call. She did not do so. The Applicant's position was that he felt the Respondent was attempting to delay matters, she avoided him when it suited her. He wished to proceed as it was unfair if he could not do so when he desperately needed the Property. The Tribunal continued with the Hearing in the absence of the Respondent at about 10.45am.
10. Mrs Webster continued with her evidence briefly and explained there had been various issues with the Respondent who they found to be awkward,

demanding and difficult. She had at times, requested repairs be carried out promptly but had made it difficult to gain access and put off visits by tradespeople. Mrs Webster also said that Miss Dunn had been responsible for some damage in the property including to a carpet and the kitchen floor, and by wallpapering over a newly-plastered wall.

11. The Applicant then called his second witness, Reece McLaren who was a friend. Mr McLaren explained the Applicant and his partner stayed with him every other week over the last year or so after the Applicant had left Glasgow. They slept on the sofa in his 2 bedroom property. He explained the situation was not ideal as he was a kinship carer for his 16 year old younger brother and that it was cramped.
  
12. The Applicant gave evidence on his own behalf. He gave evidence that his mother's house comprised of two bedrooms. She lived in the house on her own, but the second bedroom was full of his furniture from his flat in Glasgow and new furniture he had been buying for the Property as well as possessions that belonged to his late father. He described how he felt his life was being lived out of a box. He came back to his mother's house with his partner when his friends got fed up with them staying. It was not a comfortable position to be in. He was a 24 year old man with a partner who needed their own space and privacy. He emphasised the seriousness of his mother's health conditions and that it was simply not suitable for them to share with her. He explained his mother wanted to sell her house and move somewhere on the one level as her house was simply not suitable for her as she had difficulty managing the stairs. His position that he was not intending to sell the Property was borne out by the Affidavit which had been sworn before his solicitor at Miller Henry, solicitors which he referred to.
  
13. In the absence of the Respondent the Tribunal questioned the Applicant about the Respondent's assertion that it was not reasonable to evict her with reference to her position as set out in her submission and the CMD Note. He confirmed the Respondent had a 6 year old daughter who attended the local primary school. The Respondent was a full time student and had been throughout the tenancy. He could not understand her assertion that she could not find affordable accommodation as she had offered to buy the Property which would have cost her about £100 000. If she could afford to pay him £100 000 for the Property she could find somewhere affordable to live. It did not make sense to him. No further evidence was led. The Tribunal finished at about 11.10am during which time the Respondent did not re-join.

### **Findings in Fact**

14. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 1 April 2018 in relation to the Property.

15. At that time the Applicant was at Glasgow University and did not intend to return to Dundee after he completed his studies and the intention was that the Respondent could live in the Property long term. The Applicant advised the Respondent at the start of the tenancy that that was his intention.
16. When the pandemic struck the Applicant found himself with no income or money in Glasgow, not being able to afford to pay his rent and as such he required to move back to Dundee. He has been homeless without a permanent residence since about August 2020. The Applicant and his partner have been sofa surfing between his mother's house and friends' houses. The Applicant and his partner live with his mother approximately every second week or when they outstay their welcome at friends' houses.
17. The Applicant's mother has significant health issues including irritable bowel disease and bladder problems brought about by a mesh implant. The living conditions at his mother's house are unsatisfactory for the Applicant, his partner and his mother. There is no privacy and the conditions are cramped.
18. The living conditions at the Mr McLaren's house are unsatisfactory. Mr McLaren has responsibility for his 16 year old brother who lives in the house with him. The property is cramped when the Applicant and his partner stay with him and sleep on his sofa.
19. The Respondent lives in the Property with her 6 year old daughter. Her daughter attends a local primary school. The Respondent is a full time student and has been throughout the tenancy.
20. The Respondent offered to buy the Property from the Applicant. The Applicant advised the Respondent the Property is not for sale.
21. The Property is owned solely by the Applicant. His intention is to move into the Property and to reside there with his partner as his primary residence. He has no intention of selling the Property which he inherited from his late father. The Applicant and his family have a sentimental attachment to the Property.
22. On 17 November 2020, the Applicant served a Notice to Leave by way of Recorded Delivery on the Respondent in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Applicant wanted to move into the Property by reliance on Schedule 3, paragraph 4 of the 2016 Act. The Notice required the Respondent to leave the Property by 20 February 2021. The Respondent continues to reside in the Property.
23. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Dundee City Council on 29 July 2021.

## **Relevant Legislation**

24. The Tribunal considered the terms of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020.
25. 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 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.

(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.

### **Reasons for Decision**

26. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 4, namely the Applicant intends to live in the Property as his only or principal home for at least 3 months. Ground 4 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.



27. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
28. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave dated 17 November 2020 clearly states it is the Applicant's intention to live in the Property. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order namely 20 February 2021 and specifies a date in terms of Section 54(2)(c)(ii).
29. The application is 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 1 and 2. In terms of Section 54 (2) (c) (ii) the notice period of the Notice to Leave is three months.
30. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. Section 64(5) assumes a tenant will receive the Notice to Leave 48 hours after it is sent. In this case the Notice to Leave was sent by Recorded Delivery post on 17 November 2020 and became live on 20 February 2021.
31. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 20 February 2021. The application was made on 29 July 2021. In the circumstances the Tribunal is satisfied the Respondent has been given more than sufficient notice of three months in terms of the 2016 Act. Accordingly the Notice to Leave complies with Section 62.
32. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely ground 4.
33. The Tribunal considered the issues set out in the application together with the documents lodged in support together with the Respondent's written representations dated 13 October 2021 and all documents detailed in paragraph 5 above. The Respondent's position that she believed the Applicant wanted to sell the Property and on reasonableness were clearly set out in her written response of 13 October 2021 and reflected in the Note of the CMD.
34. Despite the efforts of the Tribunal Clerk to contact the Respondent she did not re-join the conference call. The Tribunal considered the Applicant's

submission that the Respondent was trying to disrupt the proceedings. He advised she was always trying to delay matters when it suited her and would not return calls. The Tribunal considered the email the Respondent had sent at 8.23pm the evening before enquiring when the Hearing was proceeding. Having considered all the correspondence between the Tribunal and the Respondent it appeared that that email had been written by the Respondent in the full knowledge that the Hearing had been assigned by the Tribunal to proceed on 13 December 2021. The letter of 4 November 2021 had been sent to her. It appeared to be more than co-incidental that she had emailed the Tribunal the night before the Hearing. The Tribunal was of the opinion that the Applicant's submission that the Respondent was trying to delay proceedings by dropping out of the Hearing had some merit and accordingly felt it was in the interests of justice to proceed without her in the circumstances, having afforded her time to re-join the conference call or contact the Tribunal.

35. Despite the fact the Respondent did not re-join the Hearing the Tribunal fully considered her submissions. In particular the Tribunal considered her position that she was not sure he would live in the Property and had stated in her submission that "*I personally feel he is going to sell the property as soon as I move out*". The Tribunal noted that this was merely a feeling the Respondent had.
36. That feeling however was not borne out by submissions by the Applicant, by his evidence or by the evidence from his mother or Mr McLaren. The Tribunal noted the content of the separate sworn Affidavit lodged which set out the intentions of the Applicant. The Tribunal found the Applicant to be credible in stating his intentions to move into the Property as his primary residence and accepted the veracity of his evidence that he was sofa surfing and relying on the goodwill of friends and his mother to put him up.
37. Mrs Webster was an impressive witness who gave her evidence in a straight forward manner, highlighting the personal difficulties and strains she was under by the fact the Applicant was homeless and had to live with her explaining not only the lack of privacy she had to endure with her serious health conditions but also the detrimental financial impact on her by her benefits being cut due to the Applicant living with her at times. It was clear to the Tribunal that there was absolutely no foundation for the Respondent's submission that the Applicant intended to sell the Property. The Applicant was clearly homeless and desperately wanted to move into the Property. It was clear the Property held great sentimental value to the Applicant and his family

and that he had no intention of selling it at this particular time. The Tribunal was satisfied that the factual basis of the application had been established and was satisfied the Applicant intended to live in the Property and had no intention to sell it.

38. 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. The Tribunal considered both the Applicant's position and the Respondent's submissions on reasonableness as set out in her submissions of 13 October relating to her daughter and the securing of alternative affordable accommodation. 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 Tribunal considered the Applicant's submissions that he required the Property to live in due to him being homeless and sofa surfing and that it was not comfortable for him or his mother, primarily due to her debilitating health issues, for him to continue to live at his own mother's house. The Respondent on the other hand was a full time student who lived at the Property with her six year old daughter. The Respondent's daughter attended a local primary school. The Tribunal noted the Respondent's position that she was looking for affordable alternative accommodation. Despite being a student the Tribunal noted she had been in a position to offer to buy the Property from the Applicant. The Tribunal felt on balance against that background the Respondent would secure affordable alternative accommodation through the Council or privately. It would no doubt be inconvenient and unsettling for the Respondent and her daughter to have to leave the Property after having lived there for nearly four years. The Tribunal noted that in an email of 18 November to the Tribunal from the Respondent, she had enclosed a screenshot of a text message she sent the applicant on 21 April 2021 which seemed to acknowledge that the Council would give her extra priority and maybe rehouse her quickly once an eviction order had been granted, and that this was an outcome which she considered likely. In the light of all of the foregoing, the Tribunal felt on balance the test of whether it was reasonable to evict weighed in favour of the Applicant. The Tribunal find it would be reasonable to grant the order.

39 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**

40. 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.**

Shirley Evans

15 December 2021

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**Legal Chair**

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**Date**