

Housing and Property Chamber
First-tier Tribunal for Scotland



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/21/1923

Re: Property at 31 Sydney Gardens, Lockerbie, DG11 2GZ (“the Property”)

Parties:

Ms Maureen Smith, 27 Mossspark Avenue, Georgetown, Dumfries, DG1 4PA (“the Applicant”) and

Pollock and McLean Solicitors, 41 Castle Street, Dumfries, DG1 1DU (“the Applicant’s Representative”) and

Ms Emma Johnstone, 31 Sydney Gardens, Lockerbie, DG11 2GZ (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

E Munroe- Ordinary Member

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:

Background

1. This Application, contained in papers lodged with the Tribunal between 10th August 2021 and 2nd September 2021, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The Applicant's Representative had provided the Tribunal, in the Application, with copies of the parties' Private Residential Tenancy Agreement ("PRT"), the Notice to Leave served on the Respondent and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to Dumfries and Galloway Council . All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied. The Representative also submitted a Rent Payments Statement.
3. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 30th September 2021, and the Certificate of Intimation was produced.

Case Management Discussion

4. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 10am today, 2nd November 2021. The Applicant's Representative's Mr A Pryce attended. The Respondent did not attend and was not represented. Mr Pryce referred to the terms of, and basis for, the Application. He stated that the Respondent had informed the Applicant that she moved out of the Property in early October 2021, following an altercation with her partner which resulted in damage to the Property, an insurance claim and the involvement of police who boarded up the Property. Mr Pryce said that the Applicant was told by the Respondent that the latter had been given accommodation by Women's Aid, she would not be returning to the Property and would not take part in these Tribunal proceedings. Mr Pryce submitted that as the Respondent had been effectively served with all papers in respect of the Application for an eviction order, and had not lodged any representations with the Tribunal, nor attended at the CMD, the eviction order should be granted for completeness.

Statement of Reasons

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (5) (1) of the 2016 Act provides that it is an eviction ground that a member of the landlord's family intends to live in the let property and confirms the criteria for the grant of an eviction order on this ground.
7. The Tribunal considered the Application papers, including the PRT, Notice to Leave and the submission of the Representative's Mr Pryce. Having done so, the Tribunal was satisfied that the Applicant sought recovery of the Property to enable qualifying relatives, her parents, to occupy the Property as their only or principal home for at least 3 months. The Respondent had not lodged representations with the Tribunal or attended the CMD to provide any evidence, and/or make any submission to oppose and contradict the basis for and

reasonableness of, the order sought, In all the circumstances the Tribunal determined that it was reasonable that an eviction order be granted.

Decision

8. The Tribunal therefore made an eviction order as sought in this Application.

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.

Legal Member: G McWilliams

Date: 2nd November 2021

Gerald McWilliams