

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 23 of the Rent (Scotland) Act  
1984**

**Chamber Ref: FTS/HPC/EV/21/2029**

**Re: Property at Woodwell Farm, Rait, Perthshire, PH2 7RZ (“the Property”)**

**Parties:**

**Mr Henry Lowson, c/o Culfargie Estates Limited, Tarrylaw Farm, Balbeggie,  
Perthshire, PH6 2HL (“the Applicant”)**

**Mrs Meena Raghunathan Fairley, Woodwell Farm, Rait, Perthshire, PH2 7RZ  
 (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the applicant against the respondent.**

1. An application was received from the landlord’s solicitor on 19 August 2021 under rule 79 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under section 23 (prohibition of eviction without due process of law) of the Rent (Scotland) Act 1984 (‘the 1984 Act’).
2. Attached to the application form were:
  - (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 1 February 2019.
  - (ii) Copy notice to leave dated 12 April 2021, sent by the respondent to Bell Ingram, the applicant’s letting agent, by email, giving notice that she intended to leave the property on 31 July 2021.

- (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending by recorded delivery to Perth and Kinross Council on 12 August 2021.
- 3. In response to a letter from the tribunal administration dated 3 September 2021, a further email was received from the applicant's solicitor on 7 September 2021, attaching: 1) the paper apart referred to in the original application form and 2) an email from the applicant to the respondent dated 16 April 2021, confirming receipt of her email giving notice to leave and acknowledging that she would vacate the property on 31 July 2021.
- 4. The application was accepted on 24 September 2021. Notice of the case management discussion (CMD) scheduled for 10 November 2021, together with the application papers and guidance notes, was served on the respondent by sheriff officer on behalf of the tribunal on 7 October 2021.
- 5. The tribunal issued a direction to the applicant on 19 October 2021. The tribunal directed the applicant to provide written evidence that a settlement was reached between the parties that the respondent would voluntarily end her tenancy at the end of July 2021 in return for an agreed payment being made by the respondent in relation to her arrears of rent, as stated in the paper apart to the application. A response was received from the applicant's solicitor by email on 29 October 2021. Written representations were received from the respondent by email on 26 October 2021.

### **The Case Management Discussion**

- 6. A CMD was held by teleconference call on 10 November 2021. The applicant was represented by Miss Jane McNicol, solicitor, of Macnabs. The respondent was present and represented herself on the teleconference call.
- 7. Miss McNicol outlined the background to the application to the tribunal. The private residential tenancy between the parties began on 1 February 2019, and the respondent had stopped paying the rent in February 2020. The applicant had later made an application to the tribunal for a payment order in respect of rent arrears. The respondent had lodged a defence to that application and had also made an application for abatement of rent /damages. She had been legally represented throughout the proceedings and following two CMDs, a hearing had been fixed for 19 April 2021. The applicant's letting agent had also served a notice to leave on the respondent on rent arrears grounds, which had expired on 28 February 2021. The applicant had been contemplating raising eviction proceedings before the tribunal at that stage.
- 8. In March 2021, the respondent's solicitor had proposed that the parties reach a settlement in order to avoid a tribunal hearing. The parties had reached an

agreement that the respondent would pay an agreed amount to the applicant in respect of the unpaid rent and future rent until the end of her tenancy. The respondent had agreed that she would also give written notice to the applicant that she would end the tenancy and remove from the property by 31 July 2021. She had then sent a notice to quit to the applicant's letting agent on 12 April 2021, stating that she would leave the property by 31 July 2021.

9. Miss McNicol submitted to the tribunal that the notice to leave met the requirements of sections 48 and 49 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the 2016 Act'). She said that the respondent had not made a request to the applicant to continue the tenancy after 31 July 2021, nor had the landlord agreed to such a request, in terms of section 48 (3) of the 2016 Act. The tenancy was now therefore at an end, in terms of section 48 (2) of the 2016 Act. She noted that in her written representations, the respondent appeared to accept that the tenancy was at an end.
10. Miss McNicol therefore asked the tribunal to grant an order under section 23 of the 1984 Act. The application had been brought under rule 79 because it would not have been competent to bring it under section 51 of the 2016 Act (and rule 109), as the tenancy had already been terminated in terms of section 48 (2) of the 2016 Act. She pointed the tribunal to the discussion at pages 304-305 of *Stalker: Evictions in Scotland (2<sup>nd</sup> edition)* which suggested that an application under rule 79 of the 2017 rules in terms of the tribunal's jurisdiction under section 71 of the 2016 Act was appropriate in this situation. She pointed out that the applicant had let the notice to leave expire and that it was now more than 3 months since the tenancy had ended.
11. The respondent told the tribunal that she had withheld her rent from February 2020 in respect of various issues of maintenance which had not been addressed by the applicant. She said that when the application for a payment order had been brought by the applicant, she had instructed a solicitor, as she was keen to leave the property and avoid any further conflict. She confirmed that an agreement had been reached between the parties regarding an abatement of the outstanding rent and advance payment of future rent up to the 31 July 2021. She had sent the notice to leave to the applicant, and she had genuinely intended to leave by that date. She had not, however, anticipated that she would have considerable difficulty in finding another property to buy or rent.
12. She said that she had contacted the letting agent and explained her difficulty in finding somewhere else to live. She said that it had not occurred to her to withdraw her notice to leave as she wanted to leave the property, but that she has asked several times if she could extend her notice to leave until she found new accommodation. The applicant had refused to agree to this.

13. She told the tribunal that she had now found a property to buy and had an entry date of 26 November 2021. While missives had not yet been concluded, she appeared to be confident that she would vacate the property by 30 November 2021. She emphasised that she had no desire to stay in the property and did not wish to oppose the application for an eviction order.

## Findings in Fact

14. The tribunal made the following findings in fact:

- The applicant is the owner of the property and is the registered landlord of the property.
- There was a private residential tenancy in place between the parties, which commenced on 1 February 2019.
- The parties reached an agreement in April 2021 as to the payment of outstanding rent and future rent up until 31 July 2021. They had also agreed that the respondent would provide written notice to leave to the applicant, stating that the tenancy would come to an end on 31 July 2021.
- The respondent sent a notice to leave to the applicant's letting agent on 12 April 2021, stating that she would leave the property by 31 July 2021.
- The applicant replied to the respondent on 16 April 2021, confirming receipt of her email giving notice to leave and acknowledging that she would vacate the property on 31 July 2021.
- The respondent was still resident in the property as at the date of the CMD.

## Reasons for decision

15. The tribunal noted that, in terms of section 49 of the 2016 Act, a notice to leave fulfils the requirements of section 48(1) of the 2016 Act, if it is:

*(a) given*

*(i) freely and without coercion of any kind*

*(ii) after the tenant begins occupying the let property*

*(b) in writing, and*

*(c) state as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.*

In terms of section 49 (1)(c), *"the minimum notice period" means a period which—*

*(a) begins on the day the notice is received by the landlord, and*

*(b) ends on the day falling—*

*(i) such number of days after it begins as the landlord and tenant have validly agreed between them, or*

*(ii) if there is no such valid agreement, 28 days after it begins.*

15. The tribunal, having had sight of: 1) the notice to leave, 2) the acknowledgement from the respondent and 3) the email correspondence between the parties' solicitors in relation to the settlement they had reached, and having noted that the respondent did not dispute the terms of the agreement, determined that the notice to leave sent by the respondent to the applicant on 12 April 2021 met the requirements of section 48(1). In terms of section 48 (2), the effect of the notice to leave was to end the tenancy on the stated date i.e. 31 July 2021.
16. The tribunal therefore accepted Miss McNicol's argument that the tenancy had ended on 31 July 2021, and that it was therefore appropriate that the application be brought under rule 79. An application under that rule is appropriate where an owner makes an application under section 23 (prohibition of eviction without due process of law) of the 1984 Act. The tribunal has jurisdiction in such an application in terms of section 71 of the 2016 Act, which confers on the tribunal whatever competence and jurisdiction a sheriff would have in relation to civil proceedings arising from a private residential tenancy.
17. The tribunal determined that, as the tenancy had been terminated as at 31 July 2021, the respondent no longer had any right or title to occupy the property. The tribunal noted that the respondent did not dispute this, and that she intends to leave the property by 30 November 2016.
18. The tribunal therefore determines that an eviction order should be granted in favour of the applicant against the respondent under section 23 of the 1984 Act.

## **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: Sarah O'Neill**

**Date: 10<sup>th</sup> November 2021**