



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/21/2101**

**Re: Property at 20/4 Somers Park, Tranent, EH33 2AF (“the Property”)**

**Parties:**

**Mrs Lindsay Cruickshank, 62 Tollhouse Grove, Tranent, EH33 2QR (“the Applicant”)**

**Miss Danielle Stafford, 20/4 Somers Park, Tranent, EH33 2AF (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order in terms of paragraph 1 of schedule 3 of the 2016 Act be granted.**

**1. Background**

- 1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of paragraph 1 of schedule 3 of the 2016 Act. The application was accompanied by copies of the written agreement between the parties, a notice to leave, a letter of engagement from a solicitor responsible for the marketing of the property and a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 (“section 11 notice”).
- 1.2 The Respondent had not lodged any written representations in advance of the Case Management Discussion.

## **2. The Case Management Discussion**

- 2.1 The Case Management Discussion took place on 28 January 2022 by teleconference. The Applicant was personally present. The Respondent was neither present nor represented. The Applicant advised the Tribunal that she had spoken to the Respondent earlier in the day and, due to a family bereavement, she would not be attending and did not oppose the application.
- 2.2 The Tribunal noted that service of the application and notice of the Case Management Discussion had been given to the Respondent by Sheriff Officer on 24 December 2021. Accordingly, the Tribunal considered it appropriate to proceed in the Respondent's absence as permitted by Rule 29 of the Chamber Rules without placing any weight on the conversation that the Applicant advised had taken place with the Respondent.
- 2.3 The Tribunal heard from the Applicant. She confirmed that the application was insisted upon. The property was the only property she owned. She was not a professional landlord, rather worked in a beauty business as her main occupation. She had assumed sole ownership following a divorce around eight years ago. At that time, the property was likely in negative equity and the Applicant required to let it. The finance secured on it was repaid on an interest only basis. The property was likely worth between £125,000 and £130,000 with around £112,000 to be repaid. The Applicant resided in a rental property herself and required to sell the property in order that she may purchase a home for her and her two children. She understood that the Respondent resided with two children, having just given birth before Christmas. She believed the Respondent to be in employment but to currently be on maternity leave. She was aware that the Respondent had sought assistance from the local authority but was not aware if any offer of housing had been made.
- 2.4 The Tribunal noted that there was an error in the section 11 notice accompanying the application in that the wrong type of tenure relating to the property had been ticked. The Applicant accepted she had made an error but this was due to unfamiliarity with the legislation surrounding tenancies. Following a brief adjournment to consider the application and submissions by the Applicant's representative, the Tribunal indicated that it was prepared to grant the order sought by the Applicant.

## **3. Reasons For Decision**

- 3.1 The Tribunal considered the application and accompanying documentation, together with the submissions made by the Applicant's representative. Given the material before it, the Tribunal considered it could determine the application without the need for a hearing, as permitted by Rule 19 of the Chamber Rules.

- 3.2 The Tribunal noted that a notice to leave dated 22 January 2021 had been hand delivered to the tenant. The said notice specified the appropriate ground relied upon by the Applicant, however, appeared to specify 21 August 2021, just short of the required six months, before an application could be made. The Tribunal was of the view this was a minor error and, given the application was not received until 31 August 2021, after the requisite period of notice would have expired, it did not invalidate the notice given the terms of paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”). The other requirements of the application were met in that it was accompanied by a letter from a solicitor engaged in relation to the sale of the property and a section 11 notice.
- 3.3 The Tribunal did not consider that the error in the section 11 notice was of any material effect. The notice was in the prescribed form, with the appropriate information as to the property and Respondent completed and had been acknowledged by housing options officer at the local authority. There was nothing to suggest, that, as a result of the error, the local authority had failed to understand the notice and appear to have accepted it.
- 3.4 Although previously a mandatory ground for issuing an eviction order, the Tribunal was mindful that the 2020 Act now required consideration as to whether it was reasonable to issue an eviction order on the basis of paragraph 1 of schedule 3 of the 2016 Act, being the ground relied upon by the Applicant in the present application. The live issue in the present application was therefore restricted to one of reasonableness.
- 3.5 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.
- 3.6 The Tribunal accepted the submissions of the Applicant and considered that she had made a reasoned decision to sell the property. She required to finance the purchase of a permanent home for her and her children. It was within the knowledge of the Tribunal that the local authority would owe certain duties under the Housing (Scotland) Act 1987 to the Respondent in that she would appear to be threatened with homelessness and there was, in effect, a safety net which should prevent her and her family from becoming homeless. In the absence of any written or oral representations by the Respondent, there was nothing to suggest to the Tribunal that there were any particular factors in this case which would defeat the Applicant’s right to sell the property for the reasons described. In all of the circumstances, it was reasonable that the Tribunal granted an eviction order.

## 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.

A. H

28 January 2022

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Legal Member/Chair

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Date