



**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/21/2135

Re: Property at 4 Douglas Terrace, Bo'ness, EH51 0LA (“the Property”)

Parties:

**Mr Austin Reid, Dr Virginia Cano, 48 Philpingstone Road, Bo'ness, EH51 9JN
 (“the Applicant”)**

**Mr David Mulholland, Ms Chantelle Marshall, 4 Douglas Terrace, Bo'ness, EH51
0LA (“the Respondent”)**

Tribunal Members:

Karen Kirk (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) granted an Eviction Order against the Respondents. The Tribunal
further superseded extract of the Order for 6 weeks.**

Present

The Applicants were present. Mr Austin Reid lead the case for the Applicants and any reference in this decision to Applicant refers to Mr Austin Reid and the Joint Applicant being Dr Cano.

The Respondents were not present. They remain in the property and were served by Sheriff Officer on 18th November 2021. The Tribunal had sight of the Certificates of Execution. The Applicant said he had also reminded the Respondents of the Hearing. The Hearing did not commence until 10.10am.

Background

This Case Management Discussion was fixed in terms of Rule 77 of the Procedure Rules and concerned an Application under Rule 109 of the Procedure Rules for an Eviction Order in relation to a Private Residential Tenancy in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by teleconference due to the covid-19 pandemic. The purpose of the Case Management Discussion was explained to those present.

Preliminary Matters

There were no preliminary matters raised at the Hearing other than the non attendance of the Respondents. The Tribunal noted the Applicant expressed that he had made contact with the Respondents in an effort to have them attend. He had been anxious he said that they would not attend. There was a delay in commencing because the Joint Applicant Dr Cano had difficulties contacting as she was calling from Mexico. These were resolved.

The Hearing

For the Applicant

The Applicant said he has had very little contact with the Respondents although he has contacted them. He said there has been a refusal of access to the property which is being dealt with under a separate application to the Tribunal as is an application for payment due to rent arrears.

The Applicant set out the position and said he had bought the property in 2009 and lived in it as his principle home until 2021. He said in 2012 he moved in to live together with the Joint Applicant in her property (second property) . In 2018 the Applicant and Joint Applicant separated and the Applicant continued to live in the second property. The Joint Applicant went to reside in Mexico. She remains there but wishes to return to live in the second property. She was due to return in July 2021 but this was postponed. The Applicant and Joint Applicant required separate accommodation. They jointly own now the property and the second property. The Joint Applicant wishes to reside in the second property and the Applicant seeks to return to live in the property as his principle home as soon as possible.

The Applicant set out that he is 80 years of age and has recently been diagnosed with cancer. He also wishes to return to live in the property as this is a smaller house and will be easier for him to deal with given his health. He said he had been that morning for an MRI and he will proceed to treatment with the possibility of surgery. He sought an Order for Eviction as he intends to reside in the property as his principle home.

For the Respondents (provided by the Applicant as the Decision was in Absence)

Whilst the Respondents were not present and had not provided written representations the Applicant said the Respondents resided at the property with three children between the ages of 3 and 8 year. The Applicant considered the Respondents may

be separated. He said both worked and that two of the children he believed were at school. The Applicant said to the best of his knowledge the family did not receive any benefit but that both Respondents were employed.

Findings in Fact and Law

1. The Tribunal considered it had all necessary information and evidence before to proceed to make a decision having regard to the Overriding objective of the Tribunal. In the Interests of Justice it considered it appropriate to make a decision on the information before it in particular due to the age and health of the Applicant.
2. The Applicant sought an Eviction Order under Section 51 of the Act under Schedule 3, Part 3 that he intends to live in the property.
3. The Applicant intends to live in the property as his principle home and for a period of at least 3 months in terms of Schedule 3, Part 3.
4. The Applicant is 80 years of age. Before moving to live with the Joint Applicant he resided in the property for on or around 3 years.
5. The Applicant has been diagnosed with cancer and the Joint Applicant seeks to return to Scotland. Both the Applicants are separated. They wish to reside separately. The Applicant wishes to reside in the property as this is smaller and he previously resided in same as his home. The Joint Applicant will return to Scotland to live in the second property that the Applicant is currently residing in.
6. The Respondents entered into a Private Residential Tenancy for the property on 1st October 2019.
7. The Applicants served a Notice to Leave in terms of the Act on the Respondents on 30th May 2021.
8. The Applicants served a Section 11 Notice on the Local Authority.
9. The Applicant raised proceedings for an Eviction Order on 5th September 2021.
10. The Respondents have not appeared or made representations. The Applicant advise that the Respondents are in employment and have three children between the ages of 3 and 8 years.
11. It was reasonable to grant an Eviction Order in terms of Section 51 of the Act under Schedule 3, Part 3 that the Applicant intends to live in the property.
12. Extract should be superseded for a period of 6 weeks.

Reasons for the Decision

The Tribunal heard evidence from the Applicants. The Applicant was credible and the Tribunal formed the view reliable in the information he provided to the Tribunal in a clear and straight forward way. There was no doubt in the Tribunal's mind that the Applicant sought to reside in the property as his principle home. He told the Tribunal about a recent cancer diagnosis and that he was 80 years of age. The Joint Applicant

agreed with the information given by him. The Applicant also gave as much information about the Respondents as he could and the Tribunal were aware of their circumstances and family situation. The Tribunal was in possession of appropriate service documentation. The Tribunal in exercising its discretion fairly and reasonably had regard to the overriding objective of the Tribunal and the fact the Applicant gave credible evidence considered in determining the issue fairly to both parties that an order ought to be granted but given the age of the children Extract should be superseded for 6 weeks.

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.

17th December 2021

Legal Member/Chair

Date