

**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/21/2464**

**Re: Property at 45 Ochil Street, Alloa, FK10 2DS (“the Property”)**

**Parties:**

**Mr Declan O'Raw, 30 Smithfield Meadows, Alloa, FK10 1TF (“the Applicant”)**

**Mr Jordan Leiper, 45 Ochil Street, Alloa, FK10 2DS (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (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 for Eviction be granted**

**Introduction**

This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016. This application is for an Eviction Order.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 1 December 2021.

A CMD took place on 13 January 2022 at 2.00 pm. The applicant represented his own interests. The respondent failed to participate in the hearing. There was no known barrier to him doing so.

**Findings and Reasons**

The property is 45 Ochil Street, Alloa FK10 2DS.

The applicant is Mr Declan O'Raw who is the landlord. The respondent is Mr Jordan Leiper who is the tenant.

The parties entered into a private residential tenancy in respect of the property which commenced on 5 September 2020. The rent was stipulated at £400 per month. A deposit in the sum of £400 was also paid.

The applicant seeks eviction on the grounds that he intends to live in the property.

The Tribunal found the unchallenged documentary evidence and the unchallenged oral evidence of the applicant credible and reliable and attached weight to the entirety of the evidence before it.

By way of Notice to Leave dated 6 July 2021, the respondent was advised of the applicant's intention to recover the property. The ground relied upon is ground 4 contained within Part 1, Schedule 3 to the 2016 Act, namely that the landlord intends to live in the property. This prescribes that it is an eviction ground if the landlord intends to occupy the property as the landlord's only and principal home for at least 3 months.

Ground 4 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 4 was 84 days and is now one of 3 months.

The Notice to Leave is dated 6 July 2021. In terms of Section 62(5) it is to be assumed that the tenant will receive Notice to Leave 48 hours after it is sent. However the Tribunal was satisfied on the basis of the applicant's evidence that the Notice to Leave was personally served upon the respondent by the applicant on 6 July 2021, being the day which the Notice to Leave is dated. The respondent's signature appears on the copy Notice to Leave produced. In the circumstances the 3 month notice period ran from then and expired on 6 October 2021 and applying the additional day under Section 62(4), the notice period expired on 7 October 2021 and, as such, the Notice to Leave was validly completed with the relevant date at that time. The Tribunal relied upon the Decision of Sheriff Fleming in the Upper Tribunal case UTS/AP/20/0029 which held that the assumed date of service under Section 62 of the Act is rebuttable.

The applicant's circumstances have changed since the lease was entered into. He now has a personal need to occupy the let property permanently. He has health problems and is now unemployed. The Tribunal was satisfied that these factors combined lead to his genuine need to reside in the let property. The ground for eviction relied upon is therefore established.

The Tribunal proceed to consider the issue of reasonableness.

The respondent is known to be a single man with no known dependents nor vulnerabilities. He has only lived in the property for a short period of time. He has not challenged any of the evidence or the application for eviction. Accordingly the Tribunal found that the making of an eviction order is reasonable.

### **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: Richard Mill**

**Date: 13<sup>th</sup> January 2022**