

**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**

**Chamber Ref: FTS/HPC/EV/22/0146**

**Re: Property at 10 Kilbride Avenue, Dunoon, PA23 7LH (“the Property”)**

**Parties:**

**Mrs Angela Johnson, Glen Lodge, 130 Auchamore Road, Dunoon, PA23 7JJ (“the Applicant”)**

**Mr Iain Blades, 10 Kilbride Avenue, Dunoon, PA23 7LH (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)**

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

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

**Background**

1. This is an application dated 18<sup>th</sup> January 2022, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant was seeking an eviction order under ground 4 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) in respect of the Property which is the subject of a Private Residential Tenancy agreement between the parties commencing on 15<sup>th</sup> March 2018 at a monthly rent of £595.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 7<sup>th</sup> May 2021, stating that an application would not be submitted to the Tribunal before 10<sup>th</sup> August 2022, with proof of service on 11<sup>th</sup> May 2021, and an affidavit from the Applicant.
3. Intimation of the application and Case Management Discussion was made upon the Respondent by Sheriff Officers on 28<sup>th</sup> March 2022.

## **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference on 13<sup>th</sup> May 2022. The Applicant was in attendance, supported by Mr Michael Johnson, and represented by Mrs Rachel McQueen, Robb Residential Ltd. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
6. Mrs McQueen moved the Tribunal to grant an eviction order. Notice to Leave has been served. Ground 4 was met in that the Applicant intends to downsize and move into the Property. It has always been the Applicant’s long term plan to do this. The Respondent has been kept informed. Initially, he was looking for other accommodation. Robb Residential agreed to provide landlord references, but were only asked for one last year. The Respondent is no longer communicating with the Applicant’s representative and has not permitted inspections to take place. The Property has deteriorated. The garden is overgrown, and the kitchen was untidy, with boxes and rubbish present at the last inspection. The Respondent is paying rent. It is thought he may not be in employment at present, but it is not certain. There has been no communication from the local authority since the section 11 notice was served upon them. There are other properties available on the market in the area at present.
7. The Applicant said the Property was her family home. She was born and brought up there. It is a two bedroom property. She and her husband are currently in a three bedroom property.
8. Mrs McQueen addressed the issue of the Notice to Leave being served upon the Respondent one day short of the requisite 3 month period. She said this was an error that arose due to the date on which Sheriff Officers served the Notice. It did not disadvantage the Respondent, as the application was not raised for some months after the expiry of the period of notice. Mrs McQueen referred to her earlier written submission stating that legislation allowed for minor errors in notices.

## **Findings in Fact and Law**

9.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 15<sup>th</sup> March 2018 at a monthly rent of £595.
  - (ii) Notice to Leave has been served upon the Respondent.

- (iii) The Applicant intends to occupy the Property as her only or principal home for at least 3 months
- (iv) It is reasonable to grant an eviction order.

### **Reasons for Decision**

10. In terms of paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020, the Tribunal found that the Notice to Leave was not invalidated by reason of the failure to provide the correct period of notice. The Respondent was not prejudiced by the error, as the application was not raised for a further five months after the notice period ended.
11. The Tribunal was satisfied that ground 4 was met, and that the Applicant intends to live in the Property as her only or principal home for at least three months.
12. In considering reasonableness, the Tribunal took into account the representations that the Applicant has always intended to downsize and return to her family home, the fact that the condition of the Property may be deteriorating, and the Respondent is failing to engage with the letting agent to allow inspections, and the limited information on the Respondent's circumstances, including the fact that he has now had a year in which to find alternative accommodation. The Tribunal took into account the fact that there is property available for let in the area.
13. The Respondent was not in attendance to put forward any reason why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
14. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

15. An eviction order in respect of the Property is granted against the Respondent.

### **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.

# H. Forbes

---

Legal Member/Chair

13<sup>th</sup> May 2022

Date