

**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/22/0580**

**Re: Property at No 1 Denend Cottages, Udney, Ellon, AB41 6RU (“the Property”)**

**Parties:**

**Mr Robin David Smith, Mrs Alyson Smith, Tillymaud, Udney, Ellon, AB41 6RX (“the Applicants”)**

**Mr Christopher Sim, Mrs Jane Sim, No 1 Denend Cottages, Udney, Ellon, AB41 6RU (“the Respondents”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Mike Scott (Ordinary Member)**

**Decision in absence of the Respondents**

The Decision of the Tribunal was unanimous

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted at the property against the Respondents and in favour of the Applicants in terms of Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that a member of the landlord’s family intends to occupy the property as that person’s only or principal home for at least three months and it is reasonable to grant the order on account of that fact.**

1.This application for an eviction order in terms of the Tribunal Rules of procedure was first received by the Tribunal on 1<sup>st</sup> March 2022 and accepted by the Tribunal on 29<sup>th</sup> April 2022.The Tribunal fixed a case management discussion for 8<sup>th</sup> July 2022 at 10am.

2.The case management discussion was attended by the Applicants. There was no appearance by or on behalf of the Respondents, but the Tribunal had received

correspondence and emails on their behalf from Shelter Scotland. The Tribunal had sight of an execution of service of the application and papers on the Respondents by Sheriff Officer and it was clear from the correspondence received from Shelter Scotland that the Respondents were both aware of the proceedings. The Tribunal decided that it was appropriate to proceed in their absence as they had received notice of the proceedings but with due regard to the letters sent in on their behalf by Shelter Scotland.

3.The Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, a tenancy report form, a letter from Aberdeenshire Council, a Notice in terms of Section 11 of the Homelessness etc ( Scotland )Act 2003, an email intimating that notice to the local authority, a track and trace document, proof of postage, signed pages of a tenancy agreement, an email regarding service of the Notice to Leave, an agreement between the parties regarding the timing of any action to evict, and a letter from the Applicants' son. On behalf of the Respondents the Tribunal had a letter from Shelter Scotland and two emails updating their position.

4.The Applicants explained that their son had completed a university course in Edinburgh and was planning to move into the property. It needed some work to be done on it and he would be doing that when he was free to move in. He would intend to live in the property as his only or principal home for at least three months. This intention was to an extent confirmed by the letter from the Applicants' son which the Tribunal had sight of. The Applicants explained that the property was only a few hundred yards from where they lived and was their family home.

5.It was clear that the tenancy had not been without issues and there was little trust on the part of the Applicants that the Respondents would move out without an order being granted. The Applicants had seen the letter and emails received from Shelter Scotland and were opposed to any delay in executing the order if that was to be considered by the Tribunal. Mr Smith had received a text from the Respondent Mr Sim on 7<sup>th</sup> July explaining that they would have the keys to a new property on 11<sup>th</sup> July and expected to be vacating the property by the end of July. The Applicants requested that an order be granted within the earliest timescale possible given that there had already been over 6 months since the Notice to Leave had been served and there had been meetings with the Respondent Mr Sim to try to agree matters and move forward but the Tribunal proceedings had been required. The Applicants were concerned and upset by the time the process had taken and the way that they felt the Respondents had behaved during the tenancy and around the Notice to Leave.

6.On behalf of the Respondents the Tribunal had received a letter from Shelter Scotland on 10<sup>th</sup> June 2022 setting out their circumstances and their efforts to obtain alternative accommodation and setting out their hope that they could leave the property with alternative accommodation in place and without having to resort to emergency accommodation for themselves and their family. They requested if an order was made that the Tribunal defer execution of the order for a period to allow for this. In an email update on 27<sup>th</sup> June the Tribunal was advised that the Respondents had received an offer of housing from a Housing Association and should receive keys on 11<sup>th</sup> July 2022. Due to potential snagging issues with any new property the request to defer execution of the order for a period was repeated. A final update was received on 7<sup>th</sup> July 2022 confirming that the Respondents would receive keys for a new property on 11<sup>th</sup> July and intended to vacate the property by the end of July.

7.The Tribunal had sufficient information upon which a decision could be made and was satisfied that the proceedings had been fair.

### **Findings in Fact**

8.The Applicants and Respondents entered into a tenancy agreement at the property with effect from 15<sup>th</sup> August 2018.

9.The Applicants' son intends to return to the family home and live in and renovate the property.

10.The Applicants' son intends to live in the property as his only or principal home for at least three months.

11.The Applicants served a notice to leave in proper form addressed to both Respondents by handing this to one Respondent on 23<sup>rd</sup> November 2021.

12.The Applicants submitted a Notice in Terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeenshire Council by email of 27<sup>th</sup> February 2022.

13.The Respondents have made efforts to secure alternative accommodation and have been advised that they will receive keys to an alternative property on 11<sup>th</sup> July 2022.

14.The Respondents have stated an intention to leave the property by end July 2022.

15. Given the history of the tenancy between the parties and the eviction ground relied upon and all the circumstances before the Tribunal it is reasonable to grant the order.

### **Reasons for Decision**

16.The Tribunal was satisfied that the eviction ground was made out, the appropriate notices had been provided and that it was reasonable to grant the order. The Tribunal noted that the date in Part 4 of the Notice to Leave which was addressed to both of the Respondents was 2 days later than it should have been, given that the notice was personally delivered to one of the tenants who are deemed to have received it on that date. The Tribunal followed the approach taken in *Holleran v McAlister* EV/18/3231 and considered whether this was a minor error in a document in terms of section 73 of the 2016 Act. Since the effect of the error was to give additional days of notice before the Tribunal application would be made, and the application was not made during the notice period, the Tribunal was satisfied that this was a minor error in a document which did not affect the validity of the Notice to Leave.

17.The Respondents have secured an alternative place to live in very early course and the Tribunal considered whether an order was necessary. The Tribunal was satisfied it was reasonable to grant an order in all of the circumstances before it and given the fact that the Applicants had concerns that the Respondents may not leave the property or would delay leaving without an order in place. The Tribunal did not consider it appropriate to delay the execution of any order if it could competently do so given that alternative accommodation is available to the Respondents very shortly and the eviction order will not be issued to the Applicants until at least 30 days after

they receive the Tribunal decision, which gives sufficient time for them to move and deal with any snagging issues at a new property.

### **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.**

Valerie Bremner

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**Legal Member/Chair**

**8.7.22**  
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**Date**