



**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/22/0681**

**Re: Property at 29 Ogilvy Place, Arbroath, DD11 4DE (“the Property”)**

**Parties:**

**Mr David Nicholson, 28D Elliot Street, Arbroath, DD11 3BZ (“the Applicant”)**

**Ms Ashley Brown, Mr Marius-Adrian Cioromela, 29 Ogilvy Place, Arbroath, DD11 4DE (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -

- a. a copy of the tenancy agreement,
  - b. a copy of the notice to leave with evidence of service
  - c. a copy section 11 Notice
  - d. a statement by the applicant
3. The Applicant's agent, Mr Beattie and both Respondents appeared.

### Discussion

4. The Applicant's agent advised that he was seeking an order for recovery of the possession of the property under the ground 4 the landlords intends to live in the property.
5. He advised that the Applicant and his wife, and 16 year old son were currently homeless. The property was the family home. The Applicant and his wife had taken a live-in post in a golf club in 2019 and they have rented the property out at that time. They had however given up this position and they needed to recover the property. It was their family home. It was also the only property they owned. It had been their family home since 2011.
6. He advised that they had given notice to leave and assumed that they would have recovered the property after the notice expired. They were no longer in the golf club accommodation. Consequently for the last few months, they had been living in spare rooms in various locations relying on the good will of family members; they had also lived in a one bedroom property. The accommodation situation has not been suitable, as the applicant now works from home and their son is studying for exams.
7. It had been very difficult and stressful. The family had been really struggling with their current living situation. They had tried to secure other rented property, but it was not financially viable for them to do so. They were sympathetic to the situation facing the respondents however, this was their family home, and they had nowhere else to live.

8. Given all of these matters they were seeking an order for recovery of possession.
9. The Respondents advised that did not dispute what was being said by the Applicant's agent. They were in a very difficult situation, however. They advised that they had approached the local council when they had received the notice to leave, to try and find other suitable accommodation. The council had advised them that they didn't have to leave until they were evicted, and they did not have any suitable accommodation for them.
10. The respondents advised that they had their three children living with them, ages 21, 17 and 3 and a half years. They advised that their eldest child had dyspraxia, depression and anxiety. Their youngest child has severe autism. The second respondent has depression.
11. The first respondent advised this situation had been very stressful for them. They understood why the applicants needed the house back, however they were upset about the way in which they had been treated by the council. They had not been helpful, and his wife had been so upset at the council's response, she had tried to commit suicide. They were under the impression that they would not be able to get any accommodation from the council even if they were evicted.
12. They advised that they had tried to find private rented accommodation however they have pets, and this makes it more difficult to find someone who will take pets.
13. They were worried about where they would go and what they would do if they were evicted.

#### Findings in Fact

14. The Tribunal found the following facts established: -

- a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 22 July 2019.
- b. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 14 October 2021. It confirmed that proceedings would not be brought until 17 January 2022. It had been sent by email on 14 October 2021. The ground in the notice to leave was ground 4 “landlord intends to live in property”.
- c. That there was a letter submitted from the landlord advising why they intended to live in the property. It appeared that the landlord and his family were currently homeless. It appeared that they had no other suitable property to live in as a family.
- d. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

### Reasons for Decision

15. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies. The ground which the Applicant seeks eviction under is ground 4. It is in the following terms :- it is an eviction ground that the landlord intends to live in the property; the ground applies if the landlord intends to occupy the let property as the landlord’s only or principal home for at least 3 months.
16. The Respondent did not dispute the submission made by the Applicant’s agent or any of the terms of the application. It appeared that this property was the landlord’s family home; that they had no other property to live in; and that the house was needed for the landlord, his wife and son to live in. They had been

living in temporary accommodation for several months now, made available to them by family members. The situation was not sustainable for the applicant and his family and had caused them all stress and anxiety.

17. The Respondent did not dispute what was being said about the applicant and his reasons for wanting the house to be returned. The respondent and his family did however have a number of vulnerabilities themselves, in terms of physical and mental health, and they were very worried about what would happen to them if they were evicted. They had attempted to find alternative accommodation but to date they had not been able to find any.

18. This is a difficult case, as there are compelling reasons why both parties require the property and the tribunal is now required to consider if it would be reasonable to grant the order.

19. The tribunal finds the ground made out. In terms of the issue of reasonableness, the tribunal had sympathy for the respondents and appreciates their concern and worry about their future housing and where they will live, however the property is the only home of the applicant, it had been their family home since 2011, and they intended that it would be again. They had only left it when they had taken up live-in employment in 2019. They have nowhere else to live and given that they own the property and wish to return to it for the long-term, it would be reasonable for an order to be granted in favour of the landlord.

20. The tribunal would note and thank the applicant's agent for providing names and addresses of local lawyers to the respondents during a short adjournment, with the intention that they may be able to get legal advice and assistance with their housing situation. We hope that securing legal advice will ensure that the needs of the respondents and their family are fully realised and considered by the local council in considering any housing application they receive from the respondents.

## Decision

21. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

## **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.**

M Barbour

**29 June 2022**

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**Legal Member/Chair**

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**Date**