



**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/22/1137**

**Re: Property at 43 John Marshall Drive, Bishopbriggs, Glasgow, G64 2SZ (“the Property”)**

**Parties:**

**Ms Silvia Catani, 15 Strathkelvin Avenue, Bishopbriggs, Glasgow (“the Applicant”)**

**Mr Alex Burrell, 43 John Marshall Drive, Bishopbriggs, Glasgow, G64 2SZ (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Jane Heppenstall (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 be granted in terms of Ground 4 of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the Applicant intends to live at the let property as her only or main home for a period of at least 3 months and it is reasonable on account of that fact to grant the order.**

**Background**

1.This application for an eviction order in terms of Rule 109 of the Tribunal Rules of Procedure was first lodged with the Tribunal on 21<sup>st</sup> April 2022 and accepted by the Tribunal on 31<sup>st</sup> May 2022.The Tribunal fixed a case management discussion for 17<sup>th</sup> August 2022 at 2pm.

## Case Management Discussions

2. The Applicant did not attend the case management discussion on 17<sup>th</sup> August 2022 but was represented by Mr McBride of Maclay Property Ltd. The Respondent did not attend the case management discussion and was not represented. The Tribunal members had sight of an execution of service of the application and supporting papers by Sheriff officer putting them through the letterbox at the property on 14<sup>th</sup> July 2022. Mr McBride requested that the Tribunal proceed in the absence of the Respondent and this request was granted given that the application and papers had been properly served and fair notice had been given to the Respondent of the date of the case management discussion.

3. At this case management discussion the Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, an email sending the Notice to Leave, a notice in terms of Section 11 of the Homelessness etc ( Scotland ) Act 2003 and an email intimating this notice to East Dunbartonshire Council. The Tribunal also had sight of an email from the landlord to the Letting Agent instructing proceedings in the first-tier tribunal and a short statement from the landlord Applicant regarding her intentions

4. Mr McBride advised the Tribunal that the Letting Agents were requested to find a tenant for the property by the Applicant. The Respondent took entry to the property on 30<sup>th</sup> August 2019. Payments of rent were erratic when the Covid 19 pandemic started, and this became an issue. The Applicant has health issues and relies on the rental income from the property. She lives herself around a mile away in another property.

5. In September 2021 the Respondent indicated that the rent would be paid up to date. It was understood he may have suffered a bereavement in October 2021 and the arrears continued. He stopped paying rent altogether in December 2021.

6. The Applicant had considered that her best option was to move back into this property which is smaller than the one she has been living in. She may sell or rent out the larger property she has been living in if she secures an eviction order and can live in the property.

7. The Notice to Leave was served in January 2022 and the Respondent appeared to cease contact with the letting Agent at that time. He called Mr McBride to say that he had had certain difficulties with his mental health. In March 2022 Mr McBride visited the property and discovered that the Respondent appeared unwell and was not working. He talked at that time of family giving him assistance with the rent arrears. In April 2022 it was known that the Respondent was seeking assistance from Money Talks. It is understood he is now working and may be earning up to £ 500 per week and it is further understood that he is at the top of a list for a council property. The Letting Agent was requested by Money Talks to write off his debt and return his deposit in order that he could secure another flat. This was not possible given the Applicant's financial situation. The rent arrears are now amounting to several thousand pounds.

The Applicant had considered seeking eviction on the grounds of rent arrears but had decided to move back in herself and seek eviction on this ground as she understood the process would be quicker given the financial situation.

8. Mr McBride moved for an eviction order and stated that it was reasonable to grant an eviction order.

9. The Tribunal adjourned to consider this but came to the view that further information was required in order to be satisfied on the Applicant's intentions and whether it was reasonable to grant the order. The case management discussion was continued until 19<sup>th</sup> October 2022 at 2pm for the Applicant to provide further information as to her intentions and her circumstances.

10. The Applicant attended the case management discussion on 19<sup>th</sup> October 2022 at 2pm along with her representative Mr McBride of Maclay Property Ltd. There was no appearance by the Respondent and the Tribunal was aware that the application and papers had been previously intimated to him and that the date of the continued case management discussion had been sent to him by recorded delivery post on 22<sup>nd</sup> September 2022 and this had not been returned as undelivered. Mr McBride asked that the Tribunal proceed in his absence and the Tribunal was satisfied that this was appropriate given that fair notice of the case management discussion had been given to the Respondent.

11. The Tribunal had sight of the same papers which it had seen at the first case management and a document submitted by the Applicant's representative giving further information on her circumstances and intentions.

12. The additional information lodged on behalf of the Applicant indicated that she had become unwell in November 2019 and on some days when she was feeling most unwell, she could not manage the stairs at her house and was confined to the upstairs of her house. In January 2021 the Applicant was diagnosed with a chronic medical condition and required to reduce her working hours to restrict these to times when she was able to work. The Applicant started to consider financial planning and whether she should move back into the rented property given that it is smaller and would be easier to manage both financially and in terms of her health. In November 2021 the Applicant's boyfriend moved in with her to assist her but this arrangement was temporary until he found his own property to buy.

13. The Applicant's position was that she intends to move to the let property to live there in order that she can manage her chronic medical condition in a smaller place which will be easier for her to move around in and cheaper to live on her own. She intends if the order is granted to rent out the house where she currently lives which will achieve a higher rental return and will assist her to afford to live independently. The rented property is close to her GP and parents who assist her with shopping and transport.

14. At the case management discussion on 19<sup>th</sup> October 2022 the Applicant indicated that she wanted to clarify what had been said regarding rent arrears accrued by the Respondent. She had first considered the issue of moving back to live in the rental property before any rent arrears had accrued and considered that given her health, she should have served a Notice to Leave sooner but had been aware that the Respondent had had some personal issues and had suffered a bereavement and had held off. She believed that the Respondent still resided at the property and updated the Tribunal that her boyfriend had had an offer accepted on a property for him to move to and this meant that she was keen to move as soon as possible to the rented property.

15. The Tribunal had sight of a Notice to Leave which had been emailed to the Respondent as well as a Notice in terms of Section 11 of the Homelessness etc (Scotland) 2003 sent to East Dunbartonshire Council in relation to this application. The Notice to leave appeared to be in proper form and served giving the appropriate notice period.

16. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings In Fact**

17. The Applicant and Respondent entered into a private residential tenancy at the property with effect from 30<sup>th</sup> August 2019.

18. The Applicant started to have health issues in November 2019 and sometimes struggles with stairs at the house she currently lives in.

19. In January 2021 the Applicant was diagnosed with a chronic health condition and required to reduce her working hours which affected her financial situation.

20. The Applicant intends to move back into the rented property as it will be easier for her to manage in terms of her health and her finances.

21. The Applicant intends to rent out the house where she lives currently to assist with her finances and allow her to live independently in the rented property which is smaller than her current house.

22. The Applicant's representative served a Notice to Leave in proper form and giving appropriate Notice to the Respondent on 18<sup>th</sup> January 2022.

23. The Applicant's representative sent a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to East Dunbartonshire Council on 21<sup>st</sup> April 2022.

24.The Applicant intends to live in the let property as her only or principal home for a period of at least three months and it is reasonable to grant an eviction order in these circumstances

## **25.Reasons for Decision**

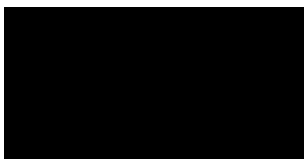
The Tribunal was satisfied that on the information before it the eviction ground was made out and that a Notice to Leave in proper form and a S11 Notice had been properly served. The Applicant 's health and financial circumstances have prompted her intention to move back into the let property as soon as is possible in order to live there as it will be easier for her to manage living there independently. The Tribunal found that it was reasonable on account of that fact to grant the order and noted that in this application the Respondent had not made any representations to the Tribunal or appeared to suggest that it would be unreasonable to grant an eviction order

## **Decision**

The Tribunal determined that an eviction order be granted in terms of Ground 4 of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the Applicant intends to live at the let property as her only or main home for a period of at least 3 months and it is reasonable on account of that fact to grant the order.

## **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  
Legal Member/Chair**

**Date 19 October 2022**