



**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/21/1048

**Re: Property at 21 Arthur Street, Newton Stewart, Dumfries And Galloway, DG8
6DE (“the Property”)**

Parties:

**Mrs Catherine Cunningham, 9 Turnstone Drive, Halewood, Liverpool, L26 7WP
 (“the Applicant”)**

**Mr Gary McBain, 21 Arthur Street, Newton Stewart, Dumfries and Galoway,
DG8 6DE (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for the eviction
of the Respondent from the property.**

Background

1. By application dated 1 May 2021 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 3 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) The Applicant submitted a copy of the tenancy agreement, Notice to Leave and Section 11 Notice in support of the Application.
2. Following correspondence between the Tribunal administration and the Applicant the Applicant subsequently submitted further documentation including a copy of planning permission granted by Dumfries and Galloway Council in respect of proposed alterations to be carried out to the property.

3. By Notice of Acceptance dated 1 July 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.

4. Intimation of the CMD was sent to the Applicant by post and was served on the Respondent by Sheriff Officers on 13 July 2021.

The Case Management Discussion

5. A CMD was held by teleconference on 12 August 2021 the Applicant and Respondent both attended in person.

6. The Tribunal confirmed with the Applicant that she had both posted the Notice to Leave to the Respondent on 27 October 2020 and hand delivered a copy to him on 31 October 2020. The Respondent confirmed that this was the case and that he did not take any issue with the validity of the Notice to Leave.

7. The Applicant confirmed that she had sent a Section 11 Notice to Dumfries and Galloway Council on 28 April 2021.

8. The Respondent explained that he was not disputing that the Applicant had carried out the correct procedures but that he was struggling to find somewhere else to stay.

9. The Tribunal queried with the Applicant why the planning permission pre-dated the start of the tenancy. The Applicant explained that she had purchased the property with the planning permission already granted from a friend and with the Respondent already a tenant. She said it had always been her intention to carry out the refurbishment of the property at some point and that the Respondent had been aware of that. The Applicant explained that matters had reached a head as a skylight was leaking and the property was not wind and watertight. She explained that a builder had inspected the property and had said the roof was starting to leak. He had recommended that the full refurbishment was carried out rather than attempting to keep carrying out repairs. The Applicant said she was aware of her responsibilities as a landlord to keep the property in a habitable condition and had made the decision to go ahead. She explained that the work involved removing the roof and cutting off the water and electricity and therefore it would not be possible for the Respondent to remain in the property whilst the work was being done.

10. The Applicant thought that the refurbishment would take about 6-8 months to complete. She explained that her husband was a builder and he could commence the removal of the roof immediately after the Respondent left the property and could also help source materials. The Applicant said she would still employ a local builder to undertake the rest of the work.

11. The Applicant advised the Tribunal that at this time she had not decided whether to re-let or sell the property once the work had been completed.

12. The Respondent explained that he had applied for a couple of houses but had been unsuccessful. Others he had looked at had either been too expensive or would not allow him to keep his dog or were not in a suitable area. The Respondent confirmed

he had contacted the Homeless Assessment Officer at Dumfries and Galloway Council, Mandy Sherry and she had told him he was being fast tracked for applications with Loreburn Housing Association and DGHP but no suitable properties were so far available. The Applicant confirmed that she had tried to assist the Respondent by sending him details of private rented properties that she had seen advertised.

13. The Respondent confirmed he was currently unemployed other than occasionally obtaining an odd day's work for a local painter and decorator. He said he received Housing Benefit of £350.00 per month and paid the balance of the rent himself from his remaining benefit payments. He explained that he did not wish to live too far from town as he did not drive and also suffered from depression and relied on having contact with friends.

14. The Applicant said that she thought that if the Respondent was rendered homeless by an order being granted then the local authority would give the Respondent priority in finding accommodation.

15. In response to a query from the Tribunal the Respondent said that he did not think he had made a homeless application as he had been told by Ms Sherry that he did not have to do that yet.

16. In response to a further query from the Tribunal the Respondent said that he had not sought advice from the C.A.B. as although he had tried phoning them, they had not answered and they were based in Stranraer which was 25 miles away. The Applicant suggested that the C.A.B. could be contacted at the Newton Stewart Library and the Respondent said he had not been aware of this.

17. The Applicant submitted that she had tried to assist the Respondent as much as possible and had contacted Ms Sherry who had initially been quite helpful. The property required to be refurbished and that meant the Respondent would have to leave.

Findings in Fact

18. The parties entered into a Private Residential Tenancy Agreement that commenced on 29 November 2019 at a rent of £100.00 per week.

19. The Applicant purchased the property with planning permission for the addition of an extension, box dormer and decked area.

20. The Respondent was already a tenant at the time the Applicant purchased the property.

21. The Respondent was aware that the Applicant may wish to refurbish the property during his tenancy.

22. The property is in need of substantial repair and is not wind and watertight.

23. The Applicant served a Notice to Leave on the Respondent by post on 27 October 2020 and personally on 31 October 2020.

24. The Applicant sent a Section 11 Notice to Dumfries and Galloway Council by email on 28 April 2021.

25. The refurbishment works at the property involve the removal of the roof and disconnection of the water and electricity supplies. The work cannot be undertaken while the Respondent remains in the property.

26. The refurbishment of the property is likely to take 6-8 months to complete.

27. The Respondent has been looking for other properties to rent.

28. The Respondent has restricted means as he is unemployed and in receipt of Housing Benefit.

29. The Respondent owns a dog and some landlords will not permit pets.

30. The Respondent wishes to remain living in Newton Stewart where accommodation is limited.

31. The Respondent has not completed a homeless application.

Reasons for Decision

32. The Tribunal was satisfied from the documents submitted by the Applicant and the oral submissions of both parties that the procedural requirements for an order under Ground 3 of Schedule 3 of the 2016 Act had been met in that a Notice to Leave had been properly served on the Respondent and the proper amount of Notice given. The Applicant had also properly intimated a Section 11 Notice to Dumfries and Galloway council at the commencement of these proceedings.

33. Were it not for the provisions of Schedule 1 of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") Ground 3 of Schedule 3 of the 2016 Act would be a mandatory ground for eviction. However, in terms of Paragraph 1(3)(c) of the 2020 Act the Tribunal may only grant an order for eviction if it considers it reasonable to do so.

34. In reaching its decision the Tribunal has considered the condition of the property and the fact that substantive repairs are clearly necessary to maintain it in a habitable condition. It appears to the Tribunal that the Applicant is correct in suggesting that the most efficient use of her funds is to carry out the works for which she has planning permission that will provide a long-term solution to the problems with the property rather than to keep carrying out short-term repairs that will not resolve the problems. As the Refurbishment requires the removal of the roof and disconnection of the water and electricity supplies it follows that the Respondent would be unable to continue to live in the property particularly if the anticipated time to complete the works is 6-8 months.

35. The Tribunal has considerable sympathy for the Respondent who has limited means and has found it difficult to find alternative accommodation particularly as he wishes to remain local to his current home and of course is understandably unwilling to be parted from his dog.

36. The Tribunal has to balance the needs of both parties in reaching its decision. It was apparent that the Applicant had tried her best to assist the Respondent to find alternative accommodation and has remained on amicable terms with him despite the considerable delays involved in trying to recover her property. Although the Respondent may well wish to remain in his local area some flexibility will be required on his part and although that was not entirely clear from the submissions moving forward the Respondent may have to consider widening the area in which he would be prepared to live. The Tribunal also took account of the fact that if rendered homeless the local authority will have an obligation to find accommodation for the Respondent and it may well be the case that until an order is granted the local authority will not prioritise any such application.

37. Having carefully considered the submissions of both parties the Tribunal was of the view that it had sufficient information before it to allow it to make a decision without the need for a hearing and determined that the order should be granted under Section 51(1) and Ground 3 of Schedule 3 of the 2016 Act.

38. The Decision of the Tribunal is unanimous.

Decision

39. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 3 of Schedule 3 of the 2016 Act.

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.

G. H

**Graham Harding
Legal Member/Chair**

**12 August 2021
Date**