



**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/21/1346**

**Re: Property at 185 Flat 7 Quarry Court, Quarry Street, Hamilton, ML3 6QR (“the Property”)**

**Parties:**

**Mr Mark Paterson, 7 Burnbrae Street, Larkhall, ML9 1BY (“the Applicant”)**

**Miss Annemarie McCormack, 185 Flat 7 Quarry Court, Quarry Street, Hamilton, ML3 6QR (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and John Blackwood (Ordinary Member)**

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

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

On 3<sup>rd</sup> June 2021 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement;
2. Copy Notice to Leave;
3. Proof of delivery;
4. Section 11 Notice;

The Application was served on the Respondent by Sheriff Officers on 26<sup>th</sup> July 2021.

On 3<sup>rd</sup> August 2021 the Applicant lodged a further document, being a letter from a previous tenant of another rental property owned by the Applicant, confirming that he was vacating that property as the Applicant wanted to sell it.

### **Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself and was supported by his letting agent, Barry Munro.. There was no attendance by the Respondent or any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

The Applicant confirmed that he would be moving into the property as soon as the Respondent vacated, and he referred to the affidavit lodged in which he had sworn this to be true.

The Applicant explained that he was in financial difficulty and that this had also put his relationship with his partner in difficulty. He said that the property had been his main residence until 2008. He then bought a house with his partner and rented out the property. He had no difficulty with his tenants. He explained that the Respondent’s mother had been a tenant of the property. She passed away and the respondent approached him asking if she could take over the tenancy. He described the Respondent’s mother as “the perfect tenant” and hoped that the Respondent would be the same. She became the tant on 6<sup>th</sup> February 2020.

The Applicant said that initially the Respondent paid rent on time, but payments then became erratic. He appreciated that he had a duty of care to the Respondent, and he contacted the police on three separate occasions to carry out welfare checks as he had not had any response from the Respondent, and the flat seemed to be in darkness. The police told him that on the first occasion the Respondent was receptive, but on the further two occasions she told them that she had nothing to say to Mark Paterson. He said that the Respondent would not let his gas engineer in to carry out the mandatory safety checks.

The letting agent confirmed that he had attempted to contact the Respondent on numerous occasions, but she had not responded to him either. He confirmed that the Respondent owed rent in the amount of £3235.

The Applicant explained that he had a mortgage over the property and was struggling to pay it due to the non-payment of rent. This had an effect on his finances, and he was in the process of selling his other rental property. His relationship was also in difficulty and he required to move in to this property as a result. He explained that the property is a one-bedroom flat. His other rental property is larger, and he would not be able to afford the bills if he went to live in it.

The Applicant confirmed that the Respondent lived alone in the property. Since the Notice to Leave was served she has made no contact and no payments. He did not know if there was other similar housing stock available in the area. His letting agent confirmed that there was very little housing available to rent, particularly of this size.

## Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement was dated 5<sup>th</sup> February 2020 and commenced on 6<sup>th</sup> February 2020;
3. A Notice To Leave was served timeously and correctly;
4. The correct notice period in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 has been given;
5. This Application was served on the Respondent by Sheriff Officer on 26<sup>th</sup> July 2021
6. The Applicant intends to occupy the property as soon as the Respondent vacates;
7. The Respondent owes rent of £3235;
8. The Respondent has not responded to any approaches made by the Applicant or his letting agent;
9. The Applicant finds himself in financial difficulty as a result of the non-payment of rent;
10. The Applicant's relationship has broken down and he needs to move out of the family home;
11. The Applicant cannot afford to move in to his second rental property and it is being marketed for sale.

## Reasons for Decision

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

*1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

*(3)Schedule 3 (eviction grounds) has effect as if—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (a), the word "and" were repealed,*

*(iii)after paragraph (b) there were inserted “, and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b), the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b), the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “3 months” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “home” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b) the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—*

*(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,*

*(ii)for paragraph (c) there were substituted—*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii)sub-paragraph (3) were repealed,*

*(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,*

*(h)in paragraph 10(2) (not occupying let property)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (a), the word “and” were repealed,*

*(iii)after paragraph (b) there were inserted “, and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*

*(j)in paragraph 13(2) (criminal behaviour)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (a), the word “and” were repealed,*

*(iii)after paragraph (b) there were inserted “, and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 1 by provision of his affidavit and also by his own evidence.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal found the Applicant to be credible and reliable. He had made approaches to the Respondent which had all been ignored or rebuffed. The Respondent had not responded to the Tribunal application, nor appeared at the CMD. The Tribunal accepted that there was a significant level of arrears and that those had led to financial difficulty for the Applicant. The Tribunal accepted his evidence that his relationship had broken down and that he needed to move out of the family home. The Tribunal considered it reasonable 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.**

**Alison Kelly**

**27<sup>th</sup> August 2021**

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**Legal Member/Chair**

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**Date**