



**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/20/1647**

**Re: Property at 22 Peploe Rise, Dunfermline, KY11 8NB (“the Property”)**

**Parties:**

**Mr Grant Stewart Barry, Mrs Anouska Barry, 50 Dovecot Way, Dunfermline, KY11 8SX (“the Applicant”)**

**Ms Fiona Grant, 22 Peploe Rise, Dunfermline, KY11 8NB (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondent under Ground 5 part 1 of schedule 3 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016**

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

The applicant seeks an eviction order which is founded upon Ground 5 of Part 1 of Schedule 3 of the 2016 Act. This is on the basis that a family member of the applicant (her mother-in-law) intends to live in the property. This is a discretionary ground for eviction.

At the time that the application was accepted for determination by the First-tier Tribunal, a Direction was issued. Ground 5(7) specifies an example of the evidence which would show that the Ground is established. An affidavit was requested confirming the position. The applicant subsequently stated a difficulty in obtaining a

Notary Public to notarise the affidavit of her mother-in-law given the current Covid-19 restrictions. An unsigned version of the affidavit was provided. The Direction also required the applicant to make specific representations at the Case Management Discussion (CMD) regarding whether the correct notice period was stated in the Notice to Leave.

Service of the application and intimation of the CMD was made upon the respondent by Sheriff Officer delivery on 25 September 2020.

No written representations or response was received by the respondent.

The CMD was listed to be heard at 2.00 pm on 29 October 2020. The applicant joined the teleconference call and represented her own interests. The respondent failed to participate in the teleconference hearing. There was no barrier to her doing so.

### Findings and Reasons

The property is 22 Peploe Rise, Dunfermline KY11 8NB.

The applicant is Mrs Anouska Jan Barry. She is the landlord of the property. The respondent is Ms Fiona Grant. She is the tenant.

The applicant is a registered landlord. The parties entered into a private residential tenancy agreement which commenced on 11 June 2018. Monthly rent was stipulated at the rate of £620 per month.

The property is jointly owned by the applicant, who is the named landlord on the tenancy agreement, and her husband who is Mr Grant Stewart Barry. The Tribunal was satisfied that he has consented to the lease entered into between the applicant and the respondent, and consents to the current application before the First-tier Tribunal.

Notice to Leave was served upon the respondent. The Notice is dated 28 April 2020. That Notice was served by Sheriff Officers on 30 April 2020 which is certified and evidenced.

The Notice to Leave was served after 7 April 2020 which is when the Coronavirus (Scotland) Act 2020 came into force. This extends the notice periods which landlords require to provide tenants in Notices to Leave. Schedule 1 of that Act specifies the relevant notice periods.

Prior to the Coronavirus (Scotland) Act 2020 coming into force, the required notice period under Ground 5 was 84 days. Following the statutory extension the required notice period is one of 3 months.

The Notice to Leave which is dated 28 April 2020 specifies that an application will not be submitted to the Tribunal for an eviction order before 31 July 2020.

Under Section 62(5) of the 2016 Act, it is assumed that a tenant receives a Notice to Leave 48 hours after it is sent. In this application the Notice to Leave was served by Sheriff Officer on 30 April 2020. There is therefore no doubt that the correct calculated date for the respondent's receipt of the Notice is 30 April 2020.

The three month period runs from that date. This means that the 3 month notice period expired on 30 July 2020. The application of Section 62(4) of the Act means that the day to be specified in the Notice, as being the day on which the applicant landlord under the tenancy could become entitled to make an application for an eviction order to the First-tier Tribunal is the date after the day on which the notice period expires ie the day after 30 July - 31 July 2020. This is the date specified in the Notice to Leave served upon the respondent as evidenced and therefore the Notice to Leave is valid.

The pre-action requirements which are under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020 do not apply to this application. Such requirements only apply to applications made to the Tribunal on or after 6 October 2020.

The Tribunal relied upon all the documentary evidence, and the oral evidence of the applicant which was all found to be credible and reliable, and is unchallenged.

The applicant's mother-in-law is Mrs Tina Barry. She is 69 years of age. She is widowed. Her husband died suddenly in August 2019. She has mental and physical health problems. She has early onset dementia and osteoarthritis. Her former home, which she owned with her late husband, was sold in early 2020. She currently lives between the applicant's home and that of her daughter, who also lives locally. She requires her own home where she can live with visiting support.

The property is a ground floor flat close to the applicant and her husband, and also the applicant's sister-in-law. The purpose of the applicant's mother's move to the property is in order that she can access the home easily in the absence of stairs, live all on the ground level and be located close to the applicant and her other daughter who also resides nearby. She is familiar with the both the property and the area which is of assistance to her given her dementia.

The 'affidavit' by the applicant's mother, Tina Barry, has not been notarised by a Notary Public. However, the statement is signed and there is no formality which requires a notarised affidavit to be before the First-tier Tribunal. Ground 5(7) states that an affidavit is an example only. It is not a mandatory requirement. The signed statement is written evidence which can be taken into account of and relied upon. She states a clear intention to reside in the let property. The Tribunal finds the written evidence of the applicant's mother-in-law credible and reliable. This is

especially so when taken along with the other detailed submissions made by the applicant regarding her mother-in-law's personal circumstances.

The Tribunal is satisfied that the applicant's mother intends to occupy the let property as her principal home for at least 3 months for the purposes of Ground 5(2)(a). The Tribunal also has to be satisfied that it is reasonable to issue an eviction order for the purposes of Ground 5(2)(b).

The Tribunal has found that the applicant's mother-in-law's personal circumstances and needs are well-established, all as set out. She is a vulnerable individual and in need for appropriate housing. The respondent is a single female. She is independent and had no dependants though has family support in the area. She has known about the applicant's wish to recover the property for some 6 months. This is a fairly lengthy period of time, even in the context of the ongoing Covid-19 pandemic. A further relevant factor which weighs heavily in favour of the applicant is that the respondent has ceased making payments of the rent. No rent has been paid since April 2020. It would be entirely unreasonable to expect the applicant to continue to house the respondent in the situation where no ongoing payments of rent are being made and her elderly vulnerable mother requires the let property. The current situation with regards to the respondent's arrears of rent would provide foundation for an alternate application being made by the applicant, if she so wished, to seek recovery of the property on the grounds of rent arrears.

On balance and taking into account all relevant factors including the respective personal circumstances and resources of both the applicant's mother-in-law on the one hand and the respondent on the other, the application for eviction is reasonable.

The Tribunal is satisfied that the eviction Ground relied upon by the applicant is both established and reasonable. In the circumstances, an order for eviction in terms of Section 51 of the 2016 Act is granted.

### **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.**

Richard Mill

29 October 2020

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Legal Member/Chair

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Date