



**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/20/2193**

**Re: Property at 56 Broadcairn Court, Motherwell, ML1 2PE (“the Property”)**

**Parties:**

**Mr Andrew Brownlie, 4 Morven Drive, Motherwell, ML1 2TT (“the Applicant”)**

**Ms Tracy Allan, 56 Broadcairn Court, Motherwell, ML1 2PE (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for an eviction order dated 15<sup>th</sup> October 2020 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the tenancy agreement, notice to leave with proof of service, and section 11 notice with proof of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 19<sup>th</sup> November 2020, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held at 14.00 on 6<sup>th</sup> January 2021 by Tele-Conference. The Applicant did not participate, but was represented by Ms Bridges, letting agent. The Respondent did not participate, but was represented by Mr Knox, solicitor.

Ms Bridges and Mr Knox advised the tribunal that there were good prospects of an amicable solution being reached, and the Tribunal continued the application to a further Case Management Discussion.

A continued Case Management Discussion was held at 14.00 on 11<sup>th</sup> February 2021 by Tele-Conference. The Applicant did not participate, but was again represented by Ms Bridges, letting agent. The Respondent did not participate, but was again represented by Mr Knox, solicitor.

Mr Knox advised the Tribunal that he had had helpful dialogue with Ms Bridges, but that the Respondent had failed to reply to his correspondence since the last Case Management Discussion, and that he was accordingly without instruction. On that basis he asked to withdraw from acting, and the Tribunal gave him permission to do so.

Thereafter, the Tribunal adjourned and the Tribunal clerk contacted the Respondent by telephone to enquire if she wished to participate in the Case Management Discussion after Mr Knox's withdrawal.

The Respondent explained to the Tribunal clerk that she had not received any communications from Mr Knox since the last Case Management Discussion, possibly because she rarely used her e-mail address. She had not expected to hear from Mr Knox until after today's Case Management Discussion.

The Respondent advised that she suffers from severe anxiety, and felt that particularly with no notice that she would have to participate, she would find it overwhelming to participate herself by telephone today and requested that she be allowed to obtain representation.

On the instruction of the Tribunal, the Tribunal clerk then contacted Mr Knox and explained the Respondent's position, and asked him if he was prepared to continue to act for the Respondent who wished him to do so and was available to speak to him by telephone.

Mr Knox confirmed that he was happy to resume acting for the Respondent if he could obtain instruction from her, and would contact her by telephone. However, he was not available for the rest of today to participate further. The Tribunal records its gratitude to Mr Knox for his assistance.

Thereafter, the Tribunal resumed the Case Management Discussion and advised Ms Bridges of what had taken place. Ms Bridges indicated that she was content for the application to be continued one further time to a Hearing, to allow Mr Knox to resume acting for the Respondent.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a Case Management Discussion.

The Tribunal considered it to be reasonable to adjourn the Case Management Discussion in the whole circumstances in terms of Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered that it was in the interests of justice, and consistent with its overriding objective of dealing with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to adjourn the Case Management Discussion for the purpose of allowing the Respondent to resume instructing Mr Knox to act on her behalf in this application.

The Tribunal clerk identified a date with the Tribunal members, and with Ms Bridges, of 9<sup>th</sup> March 2021, when all were available to attend a Hearing.

A Hearing was held at 10.00 on 9<sup>th</sup> March 2021 by Tele-Conference. The Applicant did not participate, but was again represented by Ms Bridges, letting agent. The Respondent did not participate, but was again represented by Mr Knox, solicitor.

Mr Knox confirmed that he had taken the Respondent's instructions, and that she accepted that the Applicant had sufficiently established the breakdown of his marriage, and his intention to return to occupy the Property as his principal home. Her defence to this application was on the basis that it would not be reasonable in the circumstances to grant the order.

The Tribunal then discussed further procedure with Mr Knox and Ms Bridges. As the ground relied upon is now a discretionary one, in terms of the amendments made by the *Coronavirus (Scotland) Act 2020*, the Tribunal would require to hear evidence about the circumstances pertaining to both the Applicant and the Respondent in order to determine whether or not it should grant the order sought.

Neither party had arranged to participate to give evidence, as neither party nor the representatives had appreciated the possible need for them to give evidence in terms of the amended legislation.

The Tribunal enquired whether the Respondent would be able to give evidence, standing her previously expressed severe anxiety, and Mr Knox accepted that this might prove a difficulty. Ms Bridges noted that the Applicant works offshore, and might also find it difficult to participate depending on his work schedule.

The Tribunal and parties' representatives agreed that it was in the interests of justice that both the Applicant and the Respondent lodge sworn affidavits no later than 7 days in advance of a continued Hearing. That would allow both to give evidence on their circumstances to the Tribunal, without either requiring to give that evidence orally at the Hearing.

The Tribunal would have an opportunity to consider the affidavits in advance of the Hearing, and to ask any further questions which might arise from those at the Hearing, and the party's representatives would have an opportunity to comment upon them at the Hearing.

The Tribunal set a continued Hearing to determine this matter.

Thereafter, both parties submitted affidavits containing their evidence in relation to this matter.

### **Continued Hearing**

A continued Hearing was held at 10.00 on 26<sup>th</sup> April 2021 by Tele-Conference. The Applicant participated, and was again represented by Ms Bridges, letting agent. The Respondent did not participate, but was represented by Ms Rylatt, solicitor.

The Tribunal advised parties that it had carefully considered the written affidavits of the parties and written submissions in advance of the continued Hearing, and gave the parties an opportunity to address the Tribunal further with regard to those, and to make submissions to the Tribunal upon whether it is reasonable for the Tribunal to grant the order sought.

Mrs Bridges then invited the Tribunal with reference to the application and papers to grant the order sought on ground 4 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Ms Rylatt invited the Tribunal with reference to the Respondent's affidavit and submissions to refuse the order sought, upon the basis that it was not reasonable for the Tribunal to grant the order in the circumstances which pertained to the Respondent.

The Applicant noted that he was sympathetic to the Respondent, and indicated that he particularly needed the return of possession of the Property in time for his children's school holidays which commenced at the end of June 2021. He explained that he shared responsibility for the care of his children with his ex-wife, who also is in employment, and they split childcare during the school holidays.

That being so, he indicated that he would be content if the Tribunal granted the order sought for a date before which it could not be executed to be set for just before the commencement of the school holidays to allow the Respondent more time to seek alternative accommodation

The Tribunal adjourned the continued Hearing for a short period to discuss matters, and thereafter resumed to advise parties of its decision.

## Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) as amended by the *Coronavirus (Scotland) Act 2020*, the Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 4 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to live in the property. The Tribunal may find that this ground applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

The Tribunal is satisfied that ground 4 has been established. The Applicant provided an affidavit confirming that he intends to occupy the let property as his only home for the foreseeable future, and for at least 3 months. He also requires to occupy the Property as his only home so that he can fulfil his parental duties in sharing responsibility for the care of his children. The Respondent accepted these facts.

The issue in dispute relates to whether the Tribunal should be satisfied that it is reasonable to issue an eviction order on account of those facts. The Tribunal required to carefully consider the whole circumstances in relation to this application in so doing.

The Tribunal records its considerable sympathy for the Respondent's circumstances, and notes that no fault is attributable to her in relation to this application. However, the Tribunal was satisfied that it is reasonable to issue an eviction order in this matter.

The Tribunal took account of the Applicant's need to resume possession of the Property to provide himself with a home to live in, and to allow him to care for his children. The Applicant is currently having to rent a property which is not close to where his children live with their mother, and which is also distant from both their school and their school friends. He will also suffer financial hardship in the event that he cannot occupy the Property as his home.

Balanced against that are the needs of the Respondent. She suffers from various health conditions and severe anxiety. The Tribunal does not doubt that it will be difficult for her to leave the security provided by the Property. However, she recognises that she does need to leave, and that the local authority is obliged to assist her by providing accommodation in the event that she is unable to find alternative accommodation herself. The notice to leave was served upon the Respondent 10 months ago, and although she has undoubtedly faced difficulties due to the coronavirus pandemic in finding alternative accommodation, the passage of time is not insignificant.

In all the circumstances the Tribunal was satisfied that the order sought should be granted. Hopefully, with the progressive and ongoing easing of lockdown, it will be easier for the Respondent to seek alternative accommodation.

The Tribunal, however, will in its order in terms of Rule 16A(d) (Regulation of procedure) of *The First-tier Tribunal for Scotland Housing and Property Chamber*

*(Procedure) Regulations 2017* as amended specify that the order is not to be executed before 12 noon on Friday 18<sup>th</sup> June 2021, to reflect the very fair approach which the Applicant offered, and to allow the Respondent more time to obtain alternative accommodation.

## **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

## **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.**

**Neil Kinnear  
Neil Kinnear**

26 April 2021

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**Legal Member/Chair**

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**Date**