



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/0703**

**Re: Property at 271H Blackness Road, Dundee, DD2 1RY (“the Property”)**

**Parties:**

**Miss Joy Watters, 1 Left, 293 Blackness Road, Dundee, DD2 1SA (“the Applicant”)**

**Mr Graham Henderson, 34 Edzell Street, Broughty Ferry, Dundee, DD5 3JJ (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.**

**Background**

1. The Applicant submitted an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. By decision dated 26 April 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion.
3. The Notice of Acceptance was intimated to the Applicant’s representative on 28 April 2022. The Tribunal intimated the application to the parties by letter of 14 May 2022 and advised them of the date, time and conference call details of a case management discussion assigned for 30 June 2022. In that letter, the parties were also told that they required to take part in the discussion and were

informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 4 June 2022. No written representations were received by the Tribunal.

4. The Applicant's representative lodged written submissions on 21 June and 5 August 2022.
5. On 24 June 2022, the Respondent sent an email to the Tribunal requesting a postponement of the case management discussion. He advised that he was represented by Dundee Law Centre and the first available appointment was 27 June. On 27 June the Tribunal granted the postponement request.
6. On 30 June 2022, the Tribunal received a letter from the Respondent's representative advising that they had been instructed and providing a note of dates to avoid for any new case management discussion.
7. On 1 July 2022, the Tribunal wrote to both parties intimating the date, time and conference call details of a case management discussion on 21 July 2022. The Tribunal wrote to both parties' representatives acknowledging that 21 July was listed as one of the dates the Respondent's representative asked to avoid. Parties' representatives thereafter provided a further note of dates to be avoided.
8. On 13 July 2022, the Tribunal postponed the case management discussion. On 15 July 2022, the Tribunal wrote to parties' representatives intimating the date, time and conference call details of a case management discussion on 12 August 2022.
9. On 15 July 2022, the Applicant's representative lodged medical evidence in respect of the Applicant.
10. On 11 August 2022, the Tribunal received a letter from the Respondent's representative intimating their withdrawal from acting and indicated that the reason for withdrawal was the lack of instruction. On the same date, the Respondent requested a postponement of the case management discussion. Parties were told that the Tribunal would hear submissions on the postponement request as a preliminary matter on 12 August 2022.

#### **The case management discussion**

11. The case management discussion took place by conference call. This case called alongside a related case which proceeds under chamber reference FTS/HPC/PR/22/1241. Both parties were personally present and the Applicant was represented by Miss Kelly. Parties were invited to address the Tribunal on the Respondent's postponement request. The Respondent explained that he had suffered from a number of medical conditions and that had caused a delay

in him instructing his solicitor. The application to postpone the case management discussion was opposed. The Applicant's representative explained that the Applicant was fully prepared. The case management discussion had been postponed on 2 occasions already. The Applicant's representative sent a letter to the Respondent by sheriff officer in October 2021 suggesting that he should seek legal advice. It was submitted that both parties had the same opportunities to instruct representatives and prepare for the case management discussion. It was observed by the Applicant's representative that no medical evidence had been lodged to suggest that the Respondent's ability to participate in the case management discussion was impaired. It was also submitted that the Applicant's health had suffered as a result of the delay in these proceedings. The Tribunal considered the submissions made by both parties and refused the postponement request. The Tribunal explained the purpose of the case management discussion and noted that both parties were present and in a position to assist the Tribunal in identifying whether there were any disputed facts.

12. The Tribunal heard from the Respondent. He was opposed to the application for eviction. He agreed that he moved into the property in or around springtime in 2011. He agreed that he has not been living in the property since December 2020. He explained that since that date, he has attended at the property periodically to collect mail and check on the property. He explained that in December 2020, he moved to live with his mother who lives in a semi-detached property in Broughty Ferry, shortly after suffering a family bereavement. His own health had deteriorated. He would like to return to live in the property, although expressed anxiety about returning there. In response to questions from the Tribunal, he confirmed that he is in receipt of housing benefit but did not know if he had notified the Department for Work and Pensions that he is not living in the property. The Respondent does not have a specific date in mind when he intends to return to the property but indicated that he would like to do so after medical tests have been completed. The property is a third floor flat and does not require any adaptations to be made as a result of medical conditions suffered by the Respondent. The Respondent advised that, as far as he could recollect, the last time he made contact with the Applicant was in July 2021. He recalled receiving a letter from the Applicant's solicitor in October 2021, which caused him to be upset. It was put to the Respondent that the Applicant is concerned about the condition of the property, given that it has not been lived in for almost 20 months. The Respondent understood the concern and advised that he intends to return to live in the property. The Respondent advised that he moved to England to work in the last week of October 2021 and returned to Scotland in the first week of January 2022. Upon his return, he felt exhausted and returned to live with his mother. In response to questions from the Tribunal, the Respondent advised that he did not return to the property at the end of 2020 because he and his mother were grieving. When asked why he had not returned to live in the property by spring 2021, the Respondent could not recall. The Tribunal observed that the Respondent lived away from Scotland for over 2 months to work, but even after that spell, did not return to the property.
13. The Applicant's position was that she herself had contacted the Respondent by email to establish when he intended to return to the property. The Applicant did

not receive any response from the Respondent. The Applicant was concerned that the property has not been lived in for a substantial period of time and she is concerned that the fabric of the property has deteriorated as a result. The Applicant was concerned that the property may not meet the repairing standard and for that reason, she sought access to have an inspection carried out and repairs effected if necessary. She has been unable to access the property for inspection and repair owing to the Respondent's failure to remove personal belongings. That is the reason that the Applicant made a related application to ordain the Respondent to remove personal belongings from the property. The Applicant has noted that the wallpaper in the kitchen has started to peel away and she is concerned that the property has not been adequately heated and ventilated. It was observed that the Respondent has other accommodation available to him in respect that he has been living with his mother for the last 20 months. The Applicant's position is that she would like to sell the property if she recovers vacant possession. The Applicant's representative wished to rely upon the written submissions already lodged in relation to dispensing with the notice that Ground 1 might be relied upon. It was submitted that it was reasonable in all the circumstances for the Tribunal to grant the order for eviction.

### **Findings in Fact**

14. The Respondent entered into an assured tenancy which commenced in or around spring 2011.
15. The Respondent has not resided in the property since December 2020.
16. The Applicant's representative served the Notice to Quit and Notice in terms of Section 19 of the Housing (Scotland) Act 1988 on the Respondent by sheriff officer on 8 November 2021.
17. Prior to the commencement of the tenancy, the property had been the principal home of the Applicant.

### **Reason for Decision**

18. The Tribunal found that there was no factual dispute between the parties about any material matters. It concluded therefore that a Hearing was not required.
19. The Tribunal considered the written submissions on behalf of the Applicant. It was satisfied that it was reasonable to dispense with the notice that the Applicant may rely on ground 1 as a ground of eviction. Ground 1 states: -

Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the [F1First-tier Tribunal] is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's ~~F2~~ or civil partner's only or principal home, and neither the landlord (or, in the case of joint landlords, anyone of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value.

20. In circumstances where the Applicant did not conclude the tenancy agreement with the Respondent, the Tribunal was satisfied that cause had been shown to dispense with the requirement of that notice. The Tribunal observed that the Respondent moved into the property in 2011 and he concluded a tenancy agreement with the Applicant's late husband. The Applicant produced documentation in support of her application which demonstrated that the property was her principal home prior to the tenancy being created. The Tribunal was therefore satisfied that the ground 1 was, on the face of it established.

21. However, the Tribunal also had to reach a decision as to whether it was reasonable in all of the circumstances to grant an order for eviction. Having heard from the parties, there did not appear to be any factual dispute. The Respondent accepted that he moved into the property in the spring of 2011 and had not lived in the property since December 2020. The Tribunal took account of the fact that the Respondent had not lived in the property for some 20 months and had no clear date in mind when he intended to return to live in the property. The Respondent is in receipt of housing benefit and there was no evidence that he had advised the Department for Work and Pensions that he was not living in the property. It was noted that the Respondent has alternative accommodation available to him, in respect that he has lived with his mother for the last 20 months. It was also of note that the fabric of the property is said to have deteriorated. Having taken account of all that the parties said at the case management discussion, the Tribunal concluded that it was reasonable to grant an order for eviction.

## **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.**

# N Irvine

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Legal Member/Chair

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Date 12 August 2022