



**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/21/2602

**Re: Property at G/L 2 Caird Terrace, Dundee, DD3 8BS (“the Property”)**

**Parties:**

**Miss Elaine Lawrence, 3 Melrose Terrace, Dundee, DD3 7QW (“the Applicant”)**

**Mr Christopher Chaplin, Mrs Colleen Chaplin, G/L 2 Caird Terrace, Dundee, DD3 8BS (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in favour of the Applicant of the Respondents from the Property should be granted.**

1. This was a Case Management Discussion in respect of an application by the Applicant dated August 2020 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to a direction from the Tribunal:-
  - A copy of the Tenancy Agreement dated 8<sup>th</sup> May 2020
  - Copy Notice to Leave dated 30<sup>th</sup> June 2021
  - Copy S 11 Notice to Dundee City Council
  - Copy statement saying Notice to Leave was hand delivered to the Respondents by the Applicant’s daughter Ms Jill Lawrence.
  - Statement by Mr J Lawrence the Applicant’s father confirming he needs to move into the Property.

**The Case Management Discussion (CMD)**

3. The CMD proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social

distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant attended along with her daughter Ms Jill Lawrence as supporter. Both Respondents attended, Neither party was represented.

4. Mrs Lawrence advised that the tenancy was entered into during June 2020 and the start of the pandemic. She advised that she thought she was helping the Respondents and that she and her father could manage in the house she currently lives in but advised both her and her father's health has been failing and they stairs are in issue which is why she needs to live in the flat at 2 Caird Street as it is a ground floor flat with no stairs. Ms Lawrence has lodged a statement from her father confirming that he cannot manage the stairs in the house he lives in and that he has had falls and wishes to move into the Property with the support of his daughter the Applicant. The Applicant confirmed this advising that her father has terminal cancer, has lost sight in one eye and is liable to falls, so the stairs are now dangerous for him and she also confirmed an issue for her own health as she struggles to manage them.
5. The Applicant has lodged a Notice to Leave which she advised in writing was served on the tenants by hand on 30<sup>th</sup> June 2021. She is seeking the order in terms of Ground 5 of Schedule 3 of the Act namely that her father Mr Lawrence, needs to move into the Property as soon as it is empty because of his health needs. She advised that she, her father and her other daughter who has special needs are all living in her current property but for the reasons stated above it is not suitable and they are keen to move as soon as possible. She did confirm that she understands this is difficult for the Respondents and advised there are no issues with the tenancy.
6. The Tribunal then asked Mr Chaplin for his and Ms Chaplin's position on this matter and he explained that they had received the Notice to Leave; that they understood why Ms Lawrence wanted the flat back and that they had looked on line and had viewed properties but found it very difficult to find one. Mr Chaplin advised that he and his wife live in the Property with their two year old son and that they are on the council's waiting list for accommodation, although he has tried phoning the council's homeless team to discuss this and despite doing so 3 times has not had a response yet.
7. In response to further questions Mr Chaplin advised he works full time and Mrs Chaplin advised she works part time only a few hours a week. They are looking to move a more central area in Dundee nearer family.

- **Findings in Fact**

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 1<sup>st</sup> June 2020.
2. The tenancy is continuing.
3. A notice to leave dated 30<sup>th</sup> June 2021 was served on the Respondent by hand confirming that no proceedings would be raised before 30<sup>th</sup> September 2021
4. These proceedings were raised on 18<sup>th</sup> October 2021 and the application included a copy of the Notice to Leave.
5. There is an error in the date specified in the Notice to leave stating when an application to the Tribunal can be raised but the Notice is not invalid by reason of that error.

6. A Section 11 notice has been served on Dundee City Council
7. A member of the landlords' family, namely the Applicant's father, Mr James Lawrence intends to live in the Property and cannot do so until the Respondents leaves.
8. Mr Lawrence has health conditions which make the Property more suitable for him to live in.
9. The Applicant herself has health conditions which mean the Property would be much more suitable for her to live in and help care for her father.
10. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 5 Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Applicant's father requires to live in the as his current property is unsuitable due to having stairs in it.
10. Grounds 5 require 3 months' notice under the current rules which are currently amended by the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 30<sup>th</sup> September 2021 which as the Notice has been delivered to the Respondent on the date it was signed, would not be the full 3 months plus the required extra day that should be added to comply with the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire. The date which should have been inserted would appear to have been 1<sup>st</sup> October 2021 however Paragraph 10 of Schedule 1 to the Coronavirus Scotland Act 2020 states that "Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1-9 -
  - a) the notice is not invalid by reason of that error but
  - b) it may not be relied upon by the landlord for the purpose of seeking an order for possession until the date on which it could be relied upon had it been correctly completed.
11. The Application was lodged on 18<sup>th</sup> October 2021. It was therefore lodged after the expiry of what should have been the Notice period and therefore complies with paragraph 10 of Schedule 1 of the 2020 Act and is therefore an application that the Tribunal can consider notwithstanding the error in the specification of the notice period.
12. Ground 5 of Schedule 3 of the Act is entitled "Family Member intends to live in the Property" and states
  - i. " It is an eviction ground that a member of the landlord's family intends to live in the let property.
  - ii. The First Tier Tribunal may find that the ground applies if
    - a. A member of the landlord's family intends to occupy the let property as that person's principal home for at least 3 months and

- b. The Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
13. For the purposes of Ground 5 a family member includes the father of a landlord.
14. The Tribunal accepted the verbal averments of Ms Lawrence and the written statements by Mr Lawrence that he intended to move in to the Property and make it his permanent residence. The Tribunal accepted that Mr Lawrence is a family member as he is the Applicant's father.
15. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard clear evidence that the Applicant and her father are both suffering from health conditions that mean their current home is unsuitable and that her father has experienced a number of falls recently which also make stairs dangerous. The Tribunal heard the Respondents have a young child and note Mr Chaplin is working full time and Ms Chaplin works a few hours per week. The Tribunal noted that the council will have a duty to provide assistance to the Respondents with their housing needs if and when an order for eviction is granted, Weighing up the needs of both parties the Tribunal was satisfied that it was reasonable for the order to be granted on this ground.
16. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 5 is met, and that it is reasonable for the Tribunal to grant the application.

### **Decision**

The Tribunal determined that the order for eviction sought by the Applicant should be 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.**

**J. Todd**

**Legal Member/Chair**

**21<sup>st</sup> March 2022**  
**Date**