



**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/22/4425**

**Re: Property at 2 Broadsands Road, Kirkwall, Orkney Islands, KW15 1BP (“the Property”)**

**Parties:**

**KH Orkney LTD, Kirkwall Hotel, Harbour Street, Kirkwall, Orkney, KW15 1LE (“the Applicant”)**

**Mr Allen Deeley, Keturah Lorr, 2 Broadsands Road, Kirkwall, Orkney Islands, KW15 1BP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an eviction order against the Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal dated 15 December 2022 the Applicant sought an eviction order against the Respondent under ground 8 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-
  - (i) Copy Private Residential Tenancy Agreement between the parties dated 16 August 2022;
  - (ii) Notice to Leave dated 13 October 2022, confirming that proceedings would not be raised any earlier than 11 November 2022 and citing ground 8 of schedule 3 of the 2016 Act together with proof of service by recorded delivery mail;

- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Orkney Islands Council together with proof of service by recorded delivery mail;
  - (iv) Contract of employment between the Applicant and the Respondent, Allen Deeley, dated 5 June 2022 together with Employee Handbook; and
  - (v) Copy letter from the Applicant to the Respondent, Allen Deeley, dated 9 September 2022.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 30<sup>th</sup> March 2023.
  - 3 A copy of the application paperwork together with the date and time of the Case Management Discussion with instructions for joining the teleconference was served upon the Respondent by Sheriff Officers.
  - 4 On 29 March 2023 the Tribunal received additional written representations from the Applicant confirming that the application was not subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022. The Applicant further advised that the Respondent, Keturah Lorr, was not a party to the tenancy agreement however was an occupier and had been served with a Notice to Leave as a result. The representations were emailed to the Respondents.

### **Case Management Discussion**

- 5 The Case Management Discussion took place on 30 March 2023. The Applicant was represented by Gary Nichols, Solicitor. The Respondents were not in attendance. The Tribunal noted that they had been served with the application paperwork with the date and time of the Case Management Discussion and instructions for joining the teleconference and therefore determined to proceed in their absence.
- 6 The Legal Member explained that the application had been brought under ground 8 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which states that the tenancy was entered into to provide an employee with a home and the tenant was no longer a qualifying employee. This was the issue the Tribunal required to consider, as well as the reasonableness of granting the order. She asked the Applicant to address the Tribunal on the application.
- 7 Mr Nichols explained that the Applicant runs a hotelier and restaurant business in Orkney. It can be challenging to recruit and therefore the Applicant looks to offer accommodation at quite favourable rates. The Respondent, Allen Deeley, had applied for a job as a chef and had started employment which came with the benefit of accommodation. His tenancy had commenced in August 2022. He was on a standard probationary contract however unfortunately it did not work out and his employment came to an end. On 9 September 2022 the Applicant asked the Respondents to vacate the property. The first Respondent was living with the second Respondent. They are not spouses, nor in a civil

partnership and to the best knowledge of the Applicant they were to be treated as cohabitants, hence why the Applicant was pursuing an eviction order against them both. Following on from the request to vacate the property the Respondents approached the Council to ask if they could be rehomed. They were advised that if they voluntarily left the address they would be treated as intentionally homeless and the Council would not have a duty to rehouse them. They had therefore remained in the property and had paid no rent since September. The Applicant wished to house other employees in the accommodation. Mr Nichols noted that the Respondents had not engaged with the Tribunal process, nor with his office. He confirmed that ground 8 was not affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022. His submission was that ground 8 had been met and it would be reasonable to issue an eviction order. There had been intermittent contact with the second Respondent. It was Mr Nichol's understanding that the Respondents were simply awaiting the outcome of the Tribunal process. He confirmed that there were no children nor vulnerable adults living at the address.

## **Relevant Legislation**

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **51 First-tier Tribunal's power to issue an eviction order**

(1) The First-tier Tribunal is to 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*

*(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) the eviction ground mentioned in subsection (3), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a)*

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*

*(b) that the tenant has a relevant conviction, [ground 13]*

*(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

*(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
- (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) 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.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3, Part 8**

*(1) It is an eviction ground that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the tenancy was granted to the tenant—*

*(i) in consequence of the tenant being an employee of the landlord, or*

*(ii) in the expectation that the tenant would become an employee of the landlord,*

*(b) the tenant is not employed by the landlord, and*

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

*(4) In sub-paragraph (2), "landlord" includes any person who has been a landlord under the tenancy.*

## **Findings in Fact and Law**

- 9 The Applicant entered into a Private Residential Tenancy Agreement with the first Respondent dated 16 August 2022.
- 10 The tenancy was granted to the first Respondent as a result of his employment with the Applicant.
- 11 The first Respondent's contract of employment was terminated on 9 September 2022.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 The Applicant delivered a Notice to Leave dated 13 October 2022 to the Respondents by recorded delivery mail.
- 14 The Notice to Leave cited ground 8 and confirmed that proceedings would not be raised any earlier than 11 November 2022.
- 15 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 The Respondents have no dependents residing with them.
- 17 The Respondents have consulted the local authority with a view to obtaining alternative accommodation.
- 18 The Applicant requires possession of the property to house other employees.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of ground 8 of Schedule 3 of the 2016 Act have been met.

## **Reasons for Decision**

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. It was clear that there were no matters in dispute that would require a hearing to be fixed. The Respondents

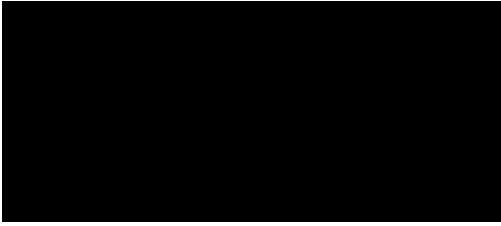
had been given the opportunity to attend, and to make written representations, but had chosen not to do so.

- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 8 of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondents. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.
- 23 The Tribunal was further satisfied on the basis of its findings in fact that the property had been let as a consequence of the first Respondent's employment and that his employment contract had come to an end. On that basis that Tribunal required to consider whether it was reasonable to make an eviction order. The Tribunal took into account the Respondents' personal circumstances, namely that they had no dependents residing with them. The Tribunal further noted that they had been in touch with the local authority and appeared to be seeking alternative accommodation. The Tribunal accepted that there may be recruitment challenges for the Applicant based on the locality within which their business was based, and that the incentive of offering accommodation was significant in attracting new employees. There was nothing before the Tribunal to contradict the position put forward by the Applicant, and no further information regarding the Respondents' personal circumstances in view of the fact that they had not entered the process. On that basis the Tribunal ultimately concluded that it would be reasonable to issue an eviction order.
- 24 The decision of the Tribunal was unanimous.

## **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.**





**30 March 2023**

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**Legal Member/Chair**

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**Date**