



**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/22/4054

Property : 8 Flat 3, Western Harbour Terrace EH6 6JN (“Property”)

Parties:

Frances Jean Bennie, Eden Curve, 2G Main Street, Guardbridge, St Andrews, Fife KY16 OUG (“Applicant”)

Cox & Co (Scotland) Ltd, 12 Castle Terrace, Edinburgh EH1 2DP (“Applicant’s Representative”)

Morag May Donnelly, 8 Flat 3, Western Harbour Terrace EH6 6JN (“Respondent”)

Pauline Wilson-Logan 6/1, Western Harbour Terrace EH6 6JN (“Respondent Representative”)

**Tribunal Members:**

Joan Devine (Legal Member)

Frances Wood (Ordinary Member)

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

**Background**

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 7 April 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 10 August 2022 (“Notice to Leave”); copy email to the Respondent dated 10 August 2022 attaching the Notice to Leave; notification to the Local Authority in terms of

Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 8 November 2022 and copy email from the Applicant to the Respondent dated 7 August 2022 stating her intention to live in the Property. The Respondent lodged a written representation dated 21 March 2023.

2. A case management discussion (“CMD”) took place before the Tribunal on 6 April 2023 by teleconference. The outcome of the CMD was that the Tribunal determined to fix a Hearing and issue a Direction. Reference is made to the Note of the CMD and to the terms of the Direction.
3. The Respondent did not lodge a response to the Direction. The Applicant’s Representative lodged a response to the Direction on 23 May 2023 as follows:
  - A letter dated 23 March 2023 from Dr Rothwell of Fife Health & Social Care Partnership.
  - A letter dated 10 May 2023 from the Applicant’s GP, Dr Barclay.
  - A written submission compiled by the Applicant’s step daughter, Grace Bennie.
4. A Hearing took place before the Tribunal on 13 July 2023 at George House, 126 George Street, Edinburgh. Michael Erskine of the Applicant’s Representative was in attendance along with the Applicant’s son, Malcolm Bennie and step daughter Grace Bennie. There was no appearance by the Respondent. The outcome of the Hearing was that the Tribunal granted an order for possession of the Property. By email dated 16 July 2023 the Respondent’s Representative sought recall of the decision granting the order for possession. With the application for recall the Respondent’s Representative lodged :
  - A letter from the Department for Work and Pensions dated 16 September 2021 regarding personal independence payment.
  - A letter from Dr McFarland dated 25 May 2023.
  - A letter from NHS Lothian dated 29 June 2023 regarding an appointment at the department of nuclear medicine.
  - Screenshots of text messages
5. The application for recall was granted by decision dated 14 August 2023. A date was set for a Hearing on 8 December 2023.

## **Hearing**

6. A Hearing took place before the Tribunal on 8 December 2023 by webex. Michael Erskine of the Applicant's Representative was in attendance along with the Applicant's son, Malcolm Bennie and step daughter Grace Bennie. The Respondent was in attendance as was the Respondent's Representative.
7. The Tribunal noted that the purpose of the Hearing was to determine firstly whether the ground for eviction had been established and secondly whether it was reasonable to grant an order for eviction. The ground for eviction founded upon was ground 4 which is that the Applicant intends to live in the Property.

### **Ground for Eviction**

8. Mr Erskine told the Tribunal that the Applicant had a "significant event" in June 2022 and since then she has had mobility issues. He said she has had a number of falls and had sustained a broken wrist. He said the Applicant is anxious and wants to move back to Edinburgh to live in the Property which is on the ground floor and has no internal stairs and easier access. It will be easier for her to live independently there. He said that the Property is closer to the Applicant's brother and easier for family to travel to in order to visit.
9. The Tribunal asked about the property currently occupied by the Applicant. Grace Bennie said that it is a townhouse which has a garage on the ground floor, a lounge, kitchen and bathroom on the first floor and 3 bedrooms and a bathroom on the second floor. The Tribunal asked about other properties owned by the Applicant. Mr Erskine said that she also owns a property in Aberdour which is let to a third party. He said that the Applicant would prefer to live in Edinburgh because of accessibility. Grace Bennie said that the Aberdour property has only one bedroom which meant if anyone needed to stay overnight they could not do so. She said the Aberdour property is all on one level. She said the Applicant has never lived in it. She said it was owned by the Applicant's parents and passed to the Applicant and her brother. She said the Applicant bought her brother out some time ago. Malcolm Bennie told the Tribunal that the Aberdour property is very small and would not be suitable for the Applicant.
10. The Tribunal asked if the Applicant had a care package in place. Mr Erskine said she did not. Malcolm Bennie said that Grace Bennie is currently living with the Applicant and had been doing so on an almost full time basis since January / February 2023. He said that once the Applicant was back in Edinburgh the intention was to get a care package in place. Grace Bennie said that she lives in Guardbridge with the Applicant most of the time. She said that the Applicant struggles with a number of things including technology. She said the Applicant

had issues with her memory and was in an anxious state. She said the Applicant is no longer driving.

11. The Tribunal asked about the accommodation in the various properties. Grace Bennie told the Tribunal that the Property has 2 bedrooms, the Aberdour property has 1 bedroom and the Guardbridge property has 3 bedrooms none of which are at ground level. She said the Property has ramped access. She did not know if it had wider doors. As regards access to the Aberdour property she said it has a door onto the street and the area is generally flat. She said it is a Victorian property containing 4 flats. Malcolm Bennie said that the Aberdour property has one bedroom, a bathroom and a small kitchen / lounge. He said that the Applicant previously lived in a rented property in Edinburgh when she owned the Aberdour property and prior to her purchasing the Property. He said she was never interested in living in the Aberdour property. He said the Applicant inherited the Aberdour property from his grandparents. He said it was not a property in which the family spent time.
12. Ms Wilson-Logan told the Tribunal that the Property is next door to where she lives. She said that when the Respondent rented the Property she was told she could live there as long as she wanted. The Applicant said she had no intention of returning to Edinburgh as she had bought the Guardbridge property. Ms Wilson-Logan said that she befriended the Applicant and she visited her in Guardbridge. She said that Grace Bennie had been a great support to the Applicant during covid. She said that after covid the Applicant told her she wanted to move back to Edinburgh. She said this caused her alarm as the Respondent had given up a mid-rent property with a Scottish Secure Tenancy in order to rent the Property. She also understood the Applicant had asked Grace Bennie to move out of the Guardbridge property and expressed surprise that she had now moved back in, though this was a good thing for the Applicant.
13. Ms Wilson-Logan said she had been in the Aberdour property which she described as a 'cosy' property and was somewhere the Applicant had used for 'wee holidays'. She said the Applicant had carried out refurbishment works to it and that it has level access. She said it does not have wide doors but neither does the Property which was built 20 years ago. She confirmed the Property has ramped access. She said she believed the Applicant genuinely wishes to live in the Property.
14. Ms Wilson-Logan said she believed the Applicant had support at the Guardbridge property as Grace Bennie is living there. She questioned why the Aberdour property was not suitable. She noted that the Applicant's son does not live in Edinburgh nor does her brother.

15. Malcolm Bennie told the Tribunal that he lives in Glasgow. He said that Grace Bennie lives in Bridge of Weir which is to the west of Glasgow. He said that the Applicant's brother lives in Restalrig about one or two miles from the Property.
16. Mr Bennie said that the Applicant had a major medical event in the summer of 2022 which turned her into a shadow of the person she had been. He said he had once been with her in the Guardbridge property and caught her as she fell on the stairs. Since then a handrail had been installed. He said the Applicant subsequently fell down the stairs before Christmas 2022 and suffered extensive bruising. He said that in February 2023 the Applicant was walking her brother to the bus stop when she fell into the road and broke her wrist. He said the Applicant now lacks confidence and does not leave home unless assisted. He said the Applicant could fall again at any time and he was grateful to Grace Bennie for putting her life on hold in order to live with the Applicant but her being there does not mean that the Applicant cannot fall again. He said that Grace Bennie living with the Applicant was not a long term, sustainable solution.
17. Mr Erskine expressed the view that it was not appropriate for anyone to tell the Applicant where she should live. He said that the Aberdour property had never been her home. He said the Property is where the Applicant wants to live and she considers the best option for her safety and security.

### **Reasonableness**

18. Ms Wilson-Logan told the Tribunal that the Respondent had been in touch with the local authority regarding alternative accommodation. She said that the Respondent had met with the local authority in the summer and she had been awarded over 40,000 points which put her at the high end of "silver". She said the local authority had not indicated a timescale for them to accommodate the Respondent or likely location of alternative accommodation. She said the Respondent now had a case worker called Melanie O'Brien.
19. The Tribunal asked the Respondent about her accommodation needs. Ms Wilson-Logan said that they were ground floor and 1 or 2 bedrooms. She said that the Respondent has cancer in her spine and fibromyalgia. She said the Respondent was waiting for a bone density scan. She said the Respondent would take whatever accommodation she was offered provided it was safe and secure and had not specified particular areas. The Tribunal asked if the Respondent had access to an online portal to monitor her application and make bids. Ms Wilson-Logan said that the Respondent did have access but had been locked out for 3 weeks. She said the case worker had been asked to assist. Ms Wilson-Logan told the Tribunal that the Respondent would be invited to bid for a property. She said the Respondent had not bid for any to date. She said the

Respondent had viewed the exterior of a property in South Queensferry but it was not suitable as it was too far out and had no direct bus link which would mean the Respondent would be isolated. She said that if you do bid for a property and are successful but turn it down, you lose your points and go back to the bottom of the scale. She said you could not view a property internally before bidding.

20. The Tribunal asked if the Respondent was aware that the Council would prioritise her if an eviction order was granted. Ms Wilson-Logan she was aware of that. She said the Respondent would be homeless and would be moved into temporary accommodation. The Tribunal asked if the Respondent was also looking in the private rented sector. Ms Wilson-Logan said that the Respondent had investigated the private rented sector but it was swamped with applicants and she had been 'priced out' of many options but she continued to seek a suitable property in the PRS as well as pursuing her Council application. She said she did have a viewing arranged for a flat in Morningside which was £1,100 per month. She said it was too expensive but she would assist the Respondent. to get her out of the current situation.
21. Grace Bennie told the Tribunal that the Applicant's medical situation remained as set out in the letters lodged although the situation had been compounded due to the current situation with various aspects of her life on hold. She said that the Applicant had suffered a stroke and several mini strokes. She said these did not show up on a CT scan.
22. Mr Erskine said that it would be reasonable for the eviction order to be granted as it would be better for the Applicant's mental health, easier for the family to visit the Applicant and it would give Grace Bennie her life back. He said it would also be safer for the Applicant to live in the Property which may reduce her anxiety.
23. Mr Bennie said that the Applicant is 78 years old and weighs around 6 stone. He said that she is very frail. He said she is unbalanced when she walks as her right foot points inwards. He said that she shuffles and needs to be supported when walking. He said that the Applicant is not capable of cooking. He said he did not know when she last went to the shops. He said she suffers memory loss regarding significant events such as where she studied. He said he wanted to get the Applicant back to living in accommodation on one level and take away the risk of the stairs. He said that the plan was to have a care package put in place once the issue regarding where the Applicant lives has been resolved. He said the family had not yet investigated care packages as the timescale and outcome of the current process was unknown.

24. Ms Wilson-Logan said that there was no evidence that the Applicant had suffered a stroke. She said the Applicant has always been thin and frail. She said that the Respondent has a mass on her spine and was waiting for a bone density scan. She said the mass was cancer but it was not yet known whether it was malignant or benign. She said that the Respondent is in considerable pain. She said that she also suffers from fibromyalgia and depression. The Respondent said that she receives the higher rate of PIP for care and the lower rate for mobility.
25. Ms Wilson-Logan said that no care package is in place for the Respondent. She said that she is the Respondent's unpaid carer when she is not working. She said that she takes the Respondent shopping and to medical appointments. She said that Asda is a short walk from the Property. She said the Respondent is able to walk there herself for a small shop but could not carry a large weekly shop. The Respondent said she is in constant pain when walking.
26. The Tribunal asked the Respondent how her conditions affect her. The Respondent said that she loses concentration a lot. She said she has fallen 3 times in the last few months. She said she has no sensitivity to heat and cold so can burn herself when cooking. She said she does not sleep due to back pain. She was asked about support aside from Ms Wilson-Logan. The Respondent said that her son who lives in Leith also supports her. Ms Wilson-Logan said that the Respondent is able to use public transport but has no involvement in social activities other than with Ms Wilson-Logan. She said that if the Respondent moved further away from her, they would consider putting in place a care package.
27. The Tribunal asked the Parties if there was anything further they wished to add. Mr Erskine said that the rent was in arrears. He said the rent had not been paid on time since December 2022. He said that in July 2023 the arrears were £1700 and were now £1650. He said he had emailed the Respondent about the arrears but there had been a lack of communication from the Respondent. Ms Wilson-Logan said that Mr Erskine had been told to copy her in to all emails and she had not received any emails from him for months. She said that the Respondent's housing benefit date had changed which would explain why payments were late.
28. Mr Erskine said that the Applicant wished to progress to an eviction order and reclaim possession of the Property. He said that would allow the Applicant to get on with her life and have a care package put in place. He said the Applicant was looking for a safe home. He said he hoped the Respondent could also find secure accommodation.

29. Ms Wilson-Logan said that if an eviction order was granted the Respondent would be made homeless while the Applicant owned 3 properties. She said the Respondent is very vulnerable. She said that the Property is a safe and happy environment for the Respondent and the current experience had been very stressful for the Respondent.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 1 April 2022 ("Tenancy Agreement").
2. The Notice to Leave was issued by email on 10 August 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 5 November 2022.
3. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 8 November 2022.
5. The Applicant intends to occupy the Property as her only or principal home for at least 3 months.
6. The Applicant owns 3 properties being the Property, a property in Guardbridge and a property in Aberdour.
7. The Applicant currently lives in a 3 storey property in Guardbridge with no bedroom or living accommodation at ground level.
8. The Applicant suffered a significant medical event in June 2022 which has impacted her mobility and left her with multiple risk factors.
9. The Applicant has suffered a number of falls one of which resulted in a broken wrist.
10. The Applicant requires assistance when leaving her home and is unable to carry out domestic tasks such as shopping or cooking.
11. The Applicant's brother lives in Restalrig which is east of central Edinburgh.



12. The Applicant's son lives in Glasgow and her step daughter lives in Renfrewshire, to the west of Glasgow. She has been staying with the Applicant most of the time since early 2023.
13. The Respondent suffers from a number of medical conditions including a mass in her spine which may be cancer and causes her significant back pain.
14. The Respondent is mobile to the extent of being able to walk to local shops, carry out shopping to a restricted degree and use public transport.
15. The Respondent has contacted her local authority regarding alternative accommodation and has been awarded 40,000 points which places her in the "silver" category for being rehoused. She does not have the top level of priority.
16. The Respondent is also seeking alternative accommodation in the private rented sector.
17. The Respondent currently lives in very close proximity to her sister who is her unpaid carer when she is not working.

### **Findings in Fact and law**

1. It is reasonable to grant an order for possession of the Property.

### **Reasons for the Decision**

30. In terms of section 51 of the Act, 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.

31. In the Application the Applicant stated that she sought recovery of possession of the Property on the basis set out in Ground 4 which is that the landlord intends to live in the property. Ground 4 (as amended by the Coronavirus (Scotland) Act 2020) states:

"(1) *It is an eviction ground that the landlord intends to live in the let property.*

(2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months."*

32. The Tribunal firstly considered whether the ground for eviction had been established. The representations made on behalf of the Applicant and the evidence given by her family indicated that the Applicant intends to occupy the Property. Ms Wilson-logan on behalf of the Respondent said she believed the Applicant genuinely wishes to live in the Property. In these circumstances it did not seem to be disputed that the ground for eviction has been established.
33. The Tribunal went on to consider whether it was reasonable to grant an order for possession. The Applicant owns 3 properties. Her current home in Guardbridge, a property in Aberdour and the Property. The Guardbridge property is set over 3 levels with only a garage at ground level. There is no bedroom or living area at ground level. In fact, all the three bedrooms are on the second floor. The Aberdour property is on one level but is small and has not been occupied by the Applicant as her home at any time nor has she ever expressed any wish to so occupy it. The Tribunal noted that prior to buying the Property, the Applicant had rented a property in Edinburgh in preference to living in the Aberdour property. The Applicant's family gave evidence in which they stated that the Property was the safest environment for the Applicant.
34. Both the Applicant and the Respondent suffer from a number of medical conditions which affect their ability to live independently and perform the activities of daily living. The Applicant is aged 78 and the Respondent is aged 60. Neither party currently has a care package in place though the Applicant has had her step-daughter living with her and providing care and support since early 2023, and the Respondent receives care and support from her sister, who lives next door, when she is not working.
35. The letters lodged on behalf of the Applicant from Dr Rothwell and Dr Barclay indicated that the Applicant had suffered an acute event which had impacted her physical and mental health and had impacted her mobility. The evidence given by the Applicant's family was that she had suffered a number of falls one of which resulted in a broken wrist. Whilst the Respondent submitted there was no evidence that the Applicant had suffered a stroke, the letters lodged and the evidence given supported the submission that the Applicant had suffered an acute event in June 2022 which had left her with multiple risk factors. The letter lodged on behalf of the Respondent from Dr McFarland indicated she has a number of medical conditions. The evidence given by Ms Wilson-Logan was that the Respondent is in constant pain and awaits investigations regarding cancer in her spine.
36. The Tribunal has a judicial duty to consider the whole circumstances in which an application is made. Some factors may have little or no weight, others may

be decisive but it is wrong for the Tribunal to exclude from consideration matters which they ought to take into account.

37. The Applicant currently lives in a townhouse and requires to negotiate stairs on a daily basis. A ground floor property would be a safer environment for the Applicant who is 78 years old and has suffered a number of falls. Living in Edinburgh would assist with access to family support and care and support services. The Applicant does own a property in Aberdour but it is quite small with a combined living/kitchen area and has only one bedroom which means family or carers could not stay overnight. Also, it is not a location that the Applicant has ever sought to use as her home and it would not be as accessible for family as a property in Edinburgh, nor would it have the public transport links available in Edinburgh. The Respondent, whilst suffering from a number of medical conditions, is mobile to the extent she can do some of her own shopping, although to a limited extent as she cannot carry much, and is able to use public transport. The Tribunal was told that the Respondent has been awarded 40,000 points by City of Edinburgh Council which would assist her in being prioritised for alternative accommodation in the event of an order for possession being granted. The Council would also have an obligation to assess her needs and provide her with temporary accommodation should a permanent solution not be immediately available were she to be evicted. The effects of the Cost of Living (Tenant Protection) (Scotland) Act 2022 means that any Order could not be enforced till 31 March 2024 at earliest and this would provide the Respondent with additional time in which to pursue other housing. The Tribunal also took into account that the matter has been ongoing for a considerable time, a Notice to Leave having been served in August 2022, and this has left both parties in a state of limbo unable to fully move on with their lives.

38. Having considered all of the circumstances, the Tribunal determined that it is reasonable to grant an order for possession of the Property. In reaching its decision the Tribunal attached particular weight to the age of the Applicant, the unsuitability of her current property in Guardbridge, the unsustainability of having her step-daughter live with her to provide support on other than a temporary basis, the need for the Applicant to live in accommodation on one level for her safety and security and the proximity of family who can support the Applicant. The Tribunal also took into account fact that she had previously lived in the Property as her principal home and had a strong desire to return there, her circumstances having changed considerably since she made the earlier decision to rent it out. The Tribunal appreciated that the grant of an order for possession would render the Respondent homeless but the evidence given on her behalf was that she had been in touch with the local authority who had

awarded her “silver” status for being rehoused and she was continuing to investigate opportunities in the private rented sector.

### **Decision**

The Tribunal grants an order for possession of the Property.

### **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. Devine

**Legal Member, 12 December 2023**