



**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/23/3702**

**Re: Property at 318 Millcroft Road, Cumbernauld, G67 2QN (“the Property”)**

**Parties:**

**Mr Mohammed Hammad and Mrs Iffat Rafeeq, both c/o Countrywide North, 29 Cadzow Street, Hamilton, South Lanarkshire ML3 6EE (“the Applicants”)**

**Ms Lee-Anne Rodgers, 318 Millcroft Road, Cumbernauld, G67 2QN and Mr Nathan Fox, whose present whereabouts are unknown (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Frances Wood (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.**

**Background**

1. By application dated 18 October 2023, the Applicants sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2026. The Grounds relied on were Grounds 4 and 4A of Schedule 3 to the Act, namely that the landlord intends to live in the Property (Ground 4) and intends to live there to alleviate financial hardship (Ground 4A).
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 29 April 2022, a Notice to Leave dated 4 July 2023 advising the Respondent that an application to the Tribunal under Ground 4 would not be made before 29 September 2023, with evidence of service by sheriff officers on 6 July 2023, and Affidavits dated 29 June 2023 and 17 October 2023 from the Applicants, regarding their reasons for making the application and stating their intention to live in the Property.

3. The Applicants stated in their Affidavits that they are currently of no fixed abode. The First-named Applicant had left employment in or around August 2022 to pursue further studies and to travel abroad with his young family, but circumstances then required them to cut short their trip and return to the UK. As they no longer had a permanent house in which to live, they had no option but to rent via Airbnb at a cost of £1,100 per month, which they struggled to afford. They lived there for about 3 months until 8 May 2023, then went to live with the First Applicant's mother in Redditch. The three of them had to share a room, as the First-named Applicant's sister, her husband and their children were also living there. The house in Redditch has 3 bedrooms and only one bathroom, and the arrangement was not sustainable longer-term. They have concerns about the quality of life of their son, as they have no fixed abode and wished, therefore, to move into their own property, the let Property.
4. Further, the Respondents had rent arrears at the date of the application of £7,200, and they needed to recover the Property to alleviate financial hardship.
5. On 12 February 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 4 March 2024. As the whereabouts of the Second-named Respondent were unknown, service was effected by advertisement on the Tribunal's website from 27 February 2024 until 26 March 2024. The Respondents did not make any written representations to the Tribunal.

### **Case Management Discussion**

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 26 March 2024. The Applicants were represented by Mr Asim Khan of D&F Lawyers, Glasgow. The Respondents were not present or represented.
7. The Applicant's representative told the Tribunal that his clients still have no fixed abode. They have taken the opportunity to visit friends in South Africa for the month of Ramadan. They have no other rental properties, and no rent has been paid since the date of the application, so the arrears are of the order of £10,000. They have a young child and it is very important to them to be able to provide their son with the quality of life that comes from having a stable home.

### **Reasons for Decision**

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
9. Section 51 of the 2016 Act states that the 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 to the 2016 Act applies.

10. Ground 4 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to live in the let property and that the Tribunal may find that Ground 4 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 that fact. Ground 4 goes on to state that evidence tending to show that the landlord has that intention includes an Affidavit that the landlord has that intention.
11. Ground 4A provides that it is an eviction ground that the landlord intends to live in the let property to alleviate financial hardship and that the Tribunal may find that Ground 4A applies if the landlord is suffering financial hardship and intends to live in 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. Evidence tending to show that the landlord has that intention includes an Affidavit stating that the landlord has that intention.
12. The Tribunal was satisfied from the evidence provided by the letting agents that the Applicants intend to live in the Property and that the very high rent arrears are causing them financial hardship. They had provided Affidavits as to their situation and intentions. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
13. The Tribunal noted that the Applicants do not own any other house and that they wish to move into the Property, having concerns for their son's quality of life. It also noted that there are very substantial rent arrears and that the Respondents had not taken the opportunity to make written representations or to appear or be represented at the Case Management Discussion to provide the Tribunal with any information as to their personal circumstances or as to why it would not be reasonable to issue an Eviction Order against them.
14. Accordingly, having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order.

## **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.**

# George Clark

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Legal Member/Chair

**26 March 2024**  
Date