

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision 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/23/1782

Re: Property at 57 Monkmain Road, Haddington, EH41 4ND (“the Property”)

Parties:

**Mr Robert Watson, Mrs Elaine Watson, 21 Borthwick Castle Road, North
Middleton, Gorebridge, EH23 4QS (“the Applicants”)**

**Ms Suzanne Paterson, 57 Monkmain Road, Haddington, EH41 4ND (“the
Respondent”)**

Tribunal Members:

Richard Mill (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order be granted against the respondent**

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.

Service of the proceedings and intimation of the Case Management Discussion (CMD) took place upon the respondent by Sheriff Officers on 30 August 2023.

The CMD took place by teleconference on 11 October 2023 at 10.00 am. The applicants were represented by Claire Mullen of TC Young solicitors. The respondent joined personally and represented her own interests. She was supported by her daughter.

Findings and Reasons

The property is 57 Monkmain Road, Haddington EH41 4ND. The applicants are Mr Robert Watson and Mrs Elaine Watson. They are the heritable proprietors and registered landlords. The respondent is Ms Suzanne Paterson who is the tenant.

The parties entered into a private residential tenancy in respect of the property which commenced on 6 January 2020. The rent was stipulated at £500 per month.

The applicants rely upon ground 4 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to live in the let property.

The relevant notice period under ground 4 at the time that the notice to leave was served was one of 84 days. The provisions of Section 62 of the Act require an additional two days to be added on for 'deemed service' of the notice and an additional one day at the end. The date specified in the notice to leave, being the earliest day of the relevant proceedings being initiated to the tribunal, should therefore be calculated at a total of 84 days plus a further 3 days from the date of completion.

The notice to leave relied upon in this case is dated 2 February 2023 and stipulates that the earliest an application be submitted to the tribunal would be 3 May 2023. On the face of it the notice is therefore one day short and invalid. The presumption of two days to serve the notice to leave is however rebuttable and there is evidence in the form of A Sheriff Officer's execution that the notice to leave was lawfully served upon the respondent on 3 February 2023. The notice to leave, served upon the respondent and relied upon in this application is therefore valid. More than the minimum statutory notice was given.

In support of the ground of eviction the first applicant has provided an affidavit dated 19 May 2023. This sets out the circumstances of himself and his wife and their intentions with regards to the let property. The applicants intend to sell their current property which no longer meets their needs. The second applicant is currently on a waiting list for NHS Lothian for a hip replacement operation. She is struggling to meet her own needs due to the facilities in the applicants' current accommodation. The let property will meet the second applicant's needs.

The tribunal was satisfied on the basis of the credible and reliable evidence produced that it is the applicants' genuine intention to live in the let property.

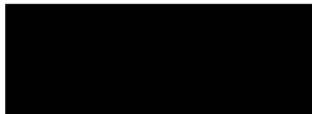
The tribunal proceeded to consider the issue of reasonableness of making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.

The respondent was not opposed to the application. She has consulted her local council but been advised to remain in the property until an eviction order has been made. A relevant Section 11 notice has been issued to the local authority. The tribunal was satisfied that the respondent will be provided with alternate accommodation in the event of an eviction order being made.

Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order. For the avoidance of doubt there is no suggestion that the respondent is anything other than a good tenant. The provisions of The Cost of Living (Tenant Protection) (Scotland) Act 2022 apply. Following recent amendment of the regulations to extend their applicability this means that the eviction cannot be executed until 31 March 2024.

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.



11 October 2023

Legal Member/Chair

Date