



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)**

**Chamber Ref: FTS/HPC/EV/22/1419**

**Re: Property at 29 Smithy Green Avenue, Danderhall, Midlothian, EH22 1LP (“the Property”)**

**Parties:**

**Ms Mary Douglas, 1 Norton Avenue, Sale, Cheshire, M33 5HE (“the Applicant”)**

**Mr Grant Peters, Ms Sonya McDonald, 29 Smithy Green Avenue, Danderhall, Midlothian, EH22 1LP (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (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 for eviction and recovery of possession be granted.**

**Background**

This is an application under Rule 109 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 51(1) of the Act for eviction and recovery of possession on Ground 4 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 9 June 2022;
2. PRTA commencing 6 December 2019;
3. Notice to Leave dated 7 March 2022 served by email of same date;
4. Section 11 Notice and proof of service on the local authority;
5. Rent Statement as at 6 October 2022;
6. Sheriff Officer Certificate of Service of CMD Notification on 28 October 2022.

## **CMD**

The Applicant participated and represented herself. The Respondent did not participate and were not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but they did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that they should attend and the Tribunal could determine the matter in absence if they did not.

The Tribunal heard from the Applicant in support of the application to recover possession. The Applicant needed to live in the Property due to the breakdown in her relationship and to be near her 93 year old mother who now needed caring for. The Property had previously been her sole or main residence. The Applicant explained that there were arrears of rent in the sum of £10,275 as at 6 October 2022 and these would increase to £12,225 as at 6 December 2022.

The Applicant informed the tribunal that the Respondent lived in the Property with 4 young children and had refused access for Gas Safety Inspections.

## **Decision and Reasons**

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 4 which are in the following terms:

*Landlord intends to live in property*

4(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 (a) the landlord intends to occupy the let property as the landlord's only or 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.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 6 December 2019;
2. The monthly rent is £975;
3. The Applicant is the owner of the Property and intends to occupy the let property as her only or principal home for at least 3 months;
4. Notice to Leave had been served on the Respondent by email on 7 March 2022;
5. The Notice to Leave gave the date of 12 May 2022 as the earliest date the Applicant could apply for recovery of possession to the tribunal;
6. Section 11 notification had been served on the local authority;
7. The Applicant needs the Property for accommodation for herself due to her relationship breakdown and the need to look after her 93 year old mother who lives nearby the Property;
8. The Respondent is in rent arrears in the sum of £11,250 as at the date of the CMD;
9. The Respondent has refused access for Gas Safety Inspections to be performed.

The Tribunal considered all of the evidence and submissions.

#### *Notice to Leave*

The tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to entertain the application despite the correct notice period not being specified in the Notice to Leave.

The Notice to Leave had been served on 7 March 2022. The Application had been submitted on 9 June 2022 and was not accepted by the tribunal until 13 September 2022.

As at the date of the CMD in excess of 8 Months had passed.

The Applicant needed the Property to live in due to her personal circumstances. The tribunal also noted the rent arrears were significant and increasing and the fact that the Applicant had not been allowed to undertake a Gas Safety Inspection.

The tribunal determined that it was reasonable in all the circumstances to entertain the application.

#### *Ground 4*

The tribunal were aware that it had to be satisfied that Ground 4 was established and that it was reasonable in the circumstances to grant the order sought. The tribunal were satisfied that the Applicant clearly needed the Property to live in as her only or principal residence for at least 3 months. The tribunal accepted the Applicant's explanation that she needed the Property to live in due to her personal circumstances. The tribunal also noted the rent arrears were significant and

increasing and the fact that the Applicant had not been allowed to undertake a Gas Safety Inspection.

The Tribunal was satisfied that Ground 4 had been established and that it was reasonable to grant the order sought.

The tribunal accordingly granted the application for eviction and recovery of possession.

### **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.**

# A. Strain

01/12/2022

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**Legal Member/Chair**

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**Date**