



**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/22/1521**

**Re: Property at 21 Auld Coal Terrace, Bonnyrigg, EH19 3JP (“the Property”)**

**Parties:**

**Mr Dean Orr, 47 Drummond Street, Muthill, Crieff, PH5 2AN (“the Applicant”)**

**Ms Christine Daly, 21 Auld Coal Terrace, Bonnyrigg, EH19 3JP (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.**

- Background
  1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Landlord intending to live in the Property, being Ground 4 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
  2. A Case Management Discussion (“CMD”) took place on 16 August 2022. The Applicant was represented by Ms Donnelly of TC Young. The Respondent was personally present and represented herself.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 20 September 2020. The Applicant had obtained employment in Spain and decided to let out the Property whilst he lived there. He lost his job in December 2021 and required to move back to Scotland. He is employed as a Quantity Surveyor. He served a Notice to Leave on the Respondent on the basis of Ground 4 of Schedule 3 to the 2016 Act, in that he intends to move into the Property and occupy it as his only or principal home. Since returning from Spain, he and his partner have been staying with friends and family for short periods of time. He works on a hybrid basis and trying to work from home is proving very difficult. He has been unable to source a rental property for himself pending Ms Daly moving out, as landlords are reluctant to let to someone who only wishes to use the property for a short period. He has looked into AirBnB as a short-term solution but this is not affordable to him. His current housing situation is resulting in his mental health suffering.
4. The Respondent submitted that she has consulted with the Local Authority and has been on their waiting list for rehousing for a period of approximately 16 months. She is 66 years old and had she known that this would only be a short-term let, she would not have taken it. Having to move out so soon has caused her a great deal of distress. She had intended to live in the Property for a few years until she was offered a permanent home with the Local Authority. She has been told by the Local Authority that she has not been on the waiting list long enough to be offered permanent accommodation at this stage. They will offer her temporary accommodation once an Eviction Order is granted by the Tribunal. Ms Daly indicated that she was accepting of that, and that she did not wish to oppose the Order and that she wanted to be able to move out into Local Authority accommodation and the granting of the Order would assist her in doing so. She confirmed that she lives alone.
5. The following documents were lodged alongside the application:
  - (i) Copy Private Residential Tenancy Agreement
  - (ii) Copy Notice to Leave
  - (iii) Proof of service of the Notice to Leave
  - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
  - (vi) Affidavit sworn by the Applicant
  - Findings in Fact
6. The Tribunal made the following findings in fact:
  - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 20 September 2020;
  - (ii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 4 of Schedule 3 to the 2016 Act, and which was served on 7 February 2022;

(iii) The Applicant is the heritable proprietor of the Property and intends to live in the Property as his only or principal home.

- Reasons for Decision

7. Section 51 of the 2016 Act states as follows:

*51 (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 or must 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.*

8. Ground 4 of Schedule 3 to the 2016 Act states as follows:

*4(1) It is an eviction ground that the landlord intends to live in the let property.*

*(2) The First-tier Tribunal must 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.*

*(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 subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.*

9. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 4 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to occupy the let property as their only or principal home for at least 3 months.

10. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent did not oppose the granting of the Order. She was already on the waiting list for a house from the Local Authority and had been advised that she would be offered temporary accommodation once an Order was granted. She wanted the Eviction Order to be granted in order to speed up the process of the Local Authority rehousing her. She no longer wishes to occupy the Property.

- Decision

11. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 4 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

## **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.**

# **F. Watson**

**Legal Member/Chair**

**Date: 16 August 2022**