



**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 and Rule 109 of The First-tier tribunal for Scotland Housing and Property Chamber (procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/20/1303**

**Re: Property at Dykehead House, Port of Menteith, Stirling, FK8 3JY (“the Property”)**

**Parties:**

**Dr David McConnell, Mr Martin Middleton, 100 Falls Road, Lesmurdie, Perth, WA6076 (“the Applicant”)**

**Mr Lawrence Jaconelli, Mrs Sarah Jane Jaconelli, Dykehead House, Port of Menteith, Stirling, FK8 3JY (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

**Decision**

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

**Background**

1. By application received on 15 June 2020, the Applicants applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondents. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave served on each of the Respondents, proof of service of the Notice to Leave by email, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a redacted Offer to purchase the Property.

2. On 23 July 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 13 August 2020, a copy of the Application and supporting documentation was served on the Respondents by Sheriff Officer, together with intimation of the date, time and arrangements to take place by telephone conference call on 7 September 2020 at 11.30am. Written representations were to be lodged by 31 August 2020. Written representations were submitted by the Respondents by email dated 15 August 2020.

### **Case Management Discussion**

4. On 7 September 2020 the Applicant, Dr David McConnell; his representative, Mrs Shirley Kenyon, Letting Manager of CKD Galbraith LLP; and the Respondent, Mr Lawrence Jaconelli, participated in the Case Management Discussion.
5. After introductions and introductory remarks by the Legal Member, Mrs Kenyon was asked to address the application on behalf of the Applicants. She stated that the Property had been up for sale for some time, an Offer was received in February for the Property and this prompted the Notice to Leave being served on the Respondents. Service was pre-Covid. The Property is still occupied by the Respondents who did not vacate in terms of the Notice to Leave. The tenants of the other two residential properties included in the Offer have moved out, although one of them is now occupied by the purchaser who has sold her own property, under a Licence to Occupy. In response to questions from the Legal Member, Mrs Kenyon confirmed that the Property was already on the market from July 2018 when the Lease with the Respondents was entered into in September 2018 and that all three sets of tenants in the properties subject to the Offer were always aware of the position. Dr McConnell confirmed that there had been viewings of the Property prior to the Offer being received but that this was the only Offer received. He stated that Missives have not been concluded as this will only occur once there is vacant possession. Mrs Kenyon confirmed that all three properties were tenanted when the Offer was received. It is "Coll Cottage" which the purchaser is currently occupying. The purchaser is in a position to proceed with the purchase as soon as this is possible and there is vacant possession.
6. Before being addressed by Mr Jaconelli, the Legal Member advised of the terms of Ground 1 on which the eviction is sought. The Legal Member referred to the Respondents' written representations and clarified the position with evictions on this ground in terms of the changes brought in by the Coronavirus (Scotland) Act 2020. In particular, the Legal Member explained that some of the protections brought in for tenants, including prolonged notice periods and mandatory eviction grounds becoming discretionary, only apply to proceedings for eviction based on Notices to Leave served from 7 April 2020 onwards. As the Notices to Leave in this case were served prior to this, during

February 2020, the correct notice period in this case remains at 84 days and the ground for eviction, if established, is mandatory.

7. Mr Jaconelli stated that it had been his understanding that the Tribunal did have discretion but accepted that this is not the case, given the Legal Member's comments. He referred to his written representations and particularly the circumstances of his family members and how this has made the situation with moving out of the Property even more difficult. He stated that he has never refused to leave but feels that the Applicants and their agents had acted unreasonably by not agreeing to give the Respondents more time, given the Covid situation and the circumstances of the Respondents. Mr Jaconelli also stated that he had made a verbal offer on the Property himself and that communication from the Applicants and their agents had not been good. Nonetheless, Mr Jaconelli then stated that they would be out of the Property by the end of this month. In response to questions from the Legal Member, Mr Jaconelli confirmed that they had secured alternative accommodation, that they already had the keys and anticipated that they would be out by 21 September 2020.
8. Mrs Kenyon advised that they were unaware of this until today and asked that Mr Jaconelli confirm the exact date of vacation to her by email. Mr Jaconelli said that he would do so. Mrs Kenyon confirmed that the Applicants would still wish an eviction order granted in case there are any delays or other issues arising with the Respondents moving out.
9. The Legal Member stated that she was satisfied that the ground of eviction had been established. She explained about the usual timescale for an eviction order being implemented, given the 30 day appeal period before the order would be issued and the further formal procedures thereafter which require a further period of notice to tenants before eviction can actually take place. The Legal Member stated that, with this in mind, and given that the timescale given by Mr Jaconelli for moving out was well within the period before the eviction order could be implemented, she was minded to deal with matter today and grant the eviction order sought.

### **Findings in Fact**

1. The Applicants are the owners and landlords of the Property.
2. The Respondents are the tenants of the Property by virtue of a Private Residential Tenancy commencing on 17 September 2018.
3. The Property was on the market for sale since July 2018, before the PRT was entered into with the Respondents.
4. A formal Offer to purchase the Property by solicitors' letter dated 7 February 2020 was received and has been accepted by the Applicants, although formal Missives have not yet been concluded.

5. It is anticipated that missives will be concluded as soon as there is vacant possession and that the sale of the Property will be completed shortly thereafter.
6. Notice to Leave specifying Ground 1 of Schedule 3 to the 2016 Act, was sent to the Respondents by email dated 27 February 2020, in accordance with the terms of the lease.
7. The date specified in the Notice to Leave as the end of the notice period was 24 May 2020.
8. The Tribunal Application was submitted on 15 June 2020.
9. The Respondents have been called upon to remove from the Property but have failed to do so and still occupy same.
10. The Respondents have now secured alternative accommodation and intend to remove from the Property before the end of September 2020.

### **Reasons for Decision**

11. The Respondents did not contest the ground of eviction as such but had been hoping that the Tribunal would exercise discretion and grant them more time in order to remove, given the timing of the application having been made during the Covid pandemic and the difficulties in securing suitable alternative accommodation during lockdown, particularly given the Respondents' personal and family circumstances.
12. The Legal Member was satisfied that the Notice to Leave was in correct form, served appropriately, gave the requisite period of notice and that these Tribunal proceedings were thereafter brought timeously, after the date specified in the Notice to Leave, all in accordance with the terms of the Lease and the relevant provisions of the 2016 Act. The amendments to the 2016 Act made by The Coronavirus (Scotland) Act 2020 as regards notice periods have no bearing in this case as the Notice to Leave was served prior to 7 April 2020, the date of commencement of the 2020 Act.
13. The Legal Member was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made at the Case Management Discussion that Ground 1 of Schedule 3 to the 2016 Act, had been established, namely that the Landlord intends to sell the Property in that the Landlord "(a) is entitled to sell the let property, and (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it" (subsection (2)). Again, the amendments to the 2016 Act referred to above do not apply in this case, given the timing of the Notice to Leave. Accordingly, Ground 1 is a mandatory ground of eviction

in this case and it was not for the Legal Member to consider the question of the reasonableness of making such an order.

14. The Legal Member therefore concluded that the application does not require to go to an evidential hearing and that an order could be made at the Case Management Discussion for recovery of possession of the property. Given the Respondents' position that they intend to vacate the Property and the timescale for that, the Legal Member saw no merit in delaying the usual timescales which apply to execution and implementation of the order.

## **Decision**

The Legal Member accordingly determines that an order for possession of the property should be granted.

## **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.**

**Nicola Weir**

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**Legal Member/Chair**

**7 September 2020**

**Date**