



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/22/2833

Re: Property at 47D Baldovan Terrace, Dundee, DD4 6NJ (“the Property”)

Parties:

Mr William David Herring, Mrs Frances Herring, The Letham Hotel, 12 The Square, Letham by Forfar, Angus, DD8 2PZ; 12 The Square, Letham, Forfar, DD8 2TE (“the Applicant”)

Miss Laura Aberdein, 47D Baldovan Terrace, Dundee, DD4 6NQ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 10th January 2022 the Applicants let the Property to the Respondent. The start date of the tenancy was 10th January 2022;
2. On 31st January 2022 the Applicant served a notice to leave on the Respondent. The notice to leave was on the basis the Landlords wish to sell the Property (Ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016);
3. A Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
4. Correspondence from solicitors confirming they had been instructed to deal with the sale of the Property was produced to the Tribunal;

THE CASE MANAGEMENT DISCUSSION

5. A Case Management Discussion was held by teleconference on 6th January 2023 at 2pm. Miss Annie Muir, trainee solicitor, MML Legal, Dundee, appeared on behalf of the Applicant. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
6. Miss Muir advised the Tribunal that, on behalf of the Applicant, she was moving the Tribunal to grant an Order for eviction. Despite the fact there was no appearance by the Respondent, the Tribunal made enquiry to enable it to consider the issue of reasonableness of the order being granted. In particular, the Tribunal enquired as to why the lease was entered into on 10th January 2022 with a notice to leave being served 21 days thereafter;
7. It was explained by Miss Muir that the Respondent had, in fact, been a tenant at the property since 2013. The previous lease, however, was prepared by the Applicants themselves without legal representation. There had been a previous application to the Tribunal seeking eviction order in terms of Section 33 of the Housing (Scotland) Act 1988. That action was dismissed, it would appear, because of various issues with the previous lease and the competency of the previous application;
8. Miss Muir advised that, due to the difficulties with the previous lease, the Respondent agreed to enter into a private residential tenancy and did so in the full knowledge that the Applicants were seeking to sell the property and, in due course, have her removed from it. The Respondent has known of the Applicants intentions since 2020;
9. In relation to the personal circumstances of the Respondent, Miss Muir advised that, from the information she had, she was a single person with no dependent children. From information provided to her by the first Applicant, Mr William Herring, the Respondent has already been in contact with the local authority with a view to arranging alternative accommodation. Miss Muir advised that, from the information she has, the Parties remain amicable with one another;
10. Miss Muir advised that her clients are now both retired. Mr Herring is now 67 years of age, Mrs Herring being 68 years of age. They did have 3 properties which had been let by them. Two have already been sold. The property involved in this case is the last property they let out. It has a mortgage over it. Due to increases in mortgage interest rates the property is not making any significant profit for Mr and Mrs Herring;
11. The personal funds of the Applicants have been depleted over recent years and they wish to sell the Property with a view to freeing the equity within it to assist them throughout their retirement;
12. Given the information available, and on the basis there was no opposition by the Respondent, the Tribunal agreed to grant an order for eviction;

FINDINGS IN FACT

13. The Tribunal found the following facts to be established:-

- a) By Lease dated 10th January 2022 the Applicants let the Property to the Respondent. The start date of the tenancy was 10th January 2022;
- b) On 31st January 2022 the Applicant served a notice to leave on the Respondent. The notice to leave was on the basis the Landlords wish to sell the Property (Ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016);
- c) A Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
- d) Correspondence from solicitors confirming they had been instructed to deal with the sale of the Property was produced to the Tribunal;
- e) It is reasonable that an order for eviction be granted.

DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 47D Baldovan Terrace, Dundee, DD4 6NJ and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 13th February 2023

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.

Virgil Crawford

6th January 2023

Legal Member/Chair

Date