

**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.**

**Chamber Ref: FTS/HPC/EV/23/0406**

**Re: Property at 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Property”)**

**Parties:**

**Mrs Kelly Anne Tanser, Mr John Simpson Tanser, 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading, RG7 1PY; 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading, RG7 1PY (“the Applicants”)**

**Mr Andrew John Smith Duncan, Christina Mhairi Ledingham, 1 Newton of Rothmaise, Steading, Inch, AB52 6UR; 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Respondents”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicants are entitled to sell the let property and intend to sell it for market value or at least put it up for sale within three months of the tenants ceasing to occupy it and it is reasonable on account of that fact to grant the order.**

**Background**

1. This application for an eviction order was first lodged with the tribunal on 7th February 2023 and a related application for a payment order with reference HPC/CV/23/0576 was lodged with the tribunal on 22nd February 2023. A case management discussion was fixed in respect of both applications for 5th May 2023 at 2:00pm.

**Case Management Discussion**

2. The case management discussion was attended by both of the Applicants but there was no appearance by or on behalf of the Respondents. The Applicants requested to proceed in the absence of the Respondents. The tribunal was prepared to grant this

request given that it had sight of an execution of service of the applications, associated papers, and the date of the case management discussion, all of which had been served on the Respondents by posting these through the letterbox at the property on the 20th of March 2023 and the Tribunal was satisfied that fair notice had been given to the Respondents.

3. The Tribunal had sight of both applications, a paper apart, a private residential tenancy agreement, a Notice to Leave together with an email intimating this Notice to Leave, a letter from agents regarding the sale of the property, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2023, an email sending this notice, photographs, screenshots of text messages, bank statements, letters to the respondent regarding outstanding rent, emails to the Tribunal, an update sent to the Tribunal on 28<sup>th</sup> April 2023 together with a further screenshot and a table of outstanding rent.

4. The Applicants own the rented property and entered into a private residential tenancy with the Respondents with effect from 17th October 2022 with monthly rent payable at the rate of £1550 pounds per month payable in advance each month. The start date for the tenancy had been due to be 5th October 2022 but the formal entry date was moved to the 17th to allow the Respondents to obtain and pay the agreed deposit and first month's rent. An updated lease with the new entry date was prepared and signed by the tenants but the Applicants no longer have a copy of this updated agreement. The Respondents are understood to live at the property with their three young children, one of who is believed not to be at school yet.

5. The Applicants have rented out the property since 2017 as the Applicant John Tanser has required to relocate a number of times due to his employment. In July 2021 the applicant Mr Tanser was given a short-term assignment in London which was due to conclude in December 2022. This assignment has now been made permanent. As a result of this change in circumstances the Applicants opted to market the property for sale. Initially they marketed the property for sale in August 2022. At that stage they could not secure the appropriate price for the property and re-advertised the property for rental until they were certain that Mr Tanser's employment would be permanently based in the London area. The Respondents requested to rent the property and the Applicants' situation was explained to them prior to entry to the property in October 2022.

6. The Applicants have started to search for a property in the Greater London area of England and are seeking to reopen the sale process on the rental property with immediate effect to release the substantial equity in the property to help them to buy a suitable property in the Greater London area. The Applicants currently reside in rented accommodation, and they had intended to move into a new newly purchased property after the sale of the leased property. Time is of the essence for them given that their daughter is 3 in June of 2023 and requires to commence pre-school shortly after that date.

7. The Applicants have entered into a non-binding commitment to sell the property to individuals who had first viewed it in 2022. The original offer made by these individuals

could not be accepted as they were unable to sell their own property. The Applicants are keen to conclude the sale but cannot do so until the property is vacant. The Applicants were aware that delays in the enforcement of any eviction order as a result of the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 might cause them to lose the sale. If that occurred, the Applicants said it was absolutely their intention to keep the property on the market to sell. They were also aware that following an inspection in February of 2023 they may require to carry out some refurbishment at the property as they had noted damage to it. They had had no recent contact with the Respondents and accepted that the property looked quite empty at that time but they had received no communication from the Respondents at any time to say that they had vacated the property and the keys had not been returned.

8. The Applicants also advised that rent was not being paid in terms of the tenancy agreement. They are a single income family, and they are starting to struggle due to the accrual of rent arrears and the fact they have to keep up rental payments on their current property. They were aware that they may have to extend their current lease on rented property in England. The rent arrears when the application for payment order was submitted stood at £4650 pounds but as of the date of the case management discussion rent arrears stood at £7750 pounds. No rent had been paid since December of 2022. The Applicants noted that rent arrears would soon reach the level of 6 months' rent and they queried whether the new eviction ground of substantial rent arrears could be added to their application. The Tribunal Legal member indicated that it was open to the Applicants to request to continue the case management discussion to seek to serve new documentation and amend their application, but the Applicants indicated that they wished to continue with the application as it stood.

9. The Applicants had what they described as a reasonable but non-binding offer on their property but could not conclude the sale until the property was vacant. The tribunal had sight of a letter from the Applicant's solicitors. This letter was dated 27 January 2022 but referred to later dates in 2022 and it was confirmed that the letter had been obtained in January 2023. This letter from Kellas Solicitors confirmed that they had received instructions to remarket the property once the tenants had vacated it. This letter also confirmed that the property had previously been marketed for sale by this firm of solicitors between July and October 2022.

10. The Tribunal Legal Member raised with the Applicants the dates on the Notice to Leave in particular the fact that the Notice was dated 7th January 2023 but appeared to have been emailed to the Applicants on 5th of January 2023. The Applicants confirmed that this just was a simple error in the date used. The date in part four of the notice was also raised by the tribunal Legal Member. The Notice had been sent by e-mail on 5th January 2023 to the Respondents and the date which should have been entered in part 4 was 5<sup>th</sup> February 2023 in terms of section 62(4) and (5) of the 2016 Act. The Applicants indicated that this had been an error and they had given an additional day's notice before an application could be made to the tribunal for eviction.

11. The tribunal considered the terms of section 73 of the private housing (Tenancies) (Scotland) Act 2016 and the decision in *Holleran v McAlister HPC/EV/18/3231* and given that there was no prejudice to the tenants and additional notice had been given to them of the date when the matter could be the subject of an application to the Tribunal, the Tribunal was content to treat this as a minor error in the notice in terms

of s73 of the Act, following Holleran, an error which did not affect the validity of the Notice.

12. The tribunal was satisfied it had sufficient information upon which to make a decision and that the proceedings had been fair.

13. The Applicants were aware that this application was affected by the provision of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **Findings in Fact**

14. The Applicants entered into a private tenancy agreement at the property with the Respondents in October 2022.

15. The tenancy was due to start on 5th of October 2022, but entry was delayed until the 17th of October 2022 to allow the Respondents to pay the first month's rent and deposit.

16. A fresh tenancy agreement was signed in the same terms as the original agreement other than the start date, but the Applicants no longer have a copy of this second agreement.

17. Monthly rent payable in terms of the agreement is £1550 payable in advance.

18. The Respondents live at the rented property with their three children.

19. The Applicants have permanently relocated to the Greater London area of England for employment purposes and are living in rented accommodation.

20. The Applicants wish to purchase property in the Greater London area of England as soon as possible in order to have their family settled.

21. In order to purchase an appropriate property the Applicants require to release substantial equity in the rented property by putting it up for sale at market value.

22. The Applicants have already received an offer to purchase the property but cannot make a binding agreement to sell the property until it is vacant.

23. No rent has been paid in terms of the tenancy agreement at the property since December 2022 and rent arrears currently stand at £7750.

24. The Applicants sent a valid Notice to Leave to the Respondents by e-mail on 5th January 2023 giving them four weeks' notice to vacate the property as the landlords wished to sell the property.

25. The Applicants sent a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeenshire Council in February 2023.

26. In the event that the offer currently received falls through the Applicants intend to continue to market the property for sale and to sell the property as quickly as possible.

27. The Applicants own the rented property and are entitled to sell it.

### **Reasons for Decision**

28. The tribunal accepted that the eviction ground was made out in this application. The applicants have already taken steps to sell the property but cannot conclude any agreement until such time as the property is vacant. In the event that the current offer is not concluded then the Applicants intend to market the property for sale immediately with a view to securing an early sale.

29. Tribunal was satisfied that the procedural elements of the application had been satisfied, that a valid Notice to Leave in proper terms had been served on the Respondents and a notice in terms of section 11 of the 2003 Act had been given to the local authority.

30. Other circumstances had been put before the tribunal in that no rent had been paid by the Respondents for some months and there appeared to be some damage at the property which may need rectified before the property is sold.

31. There was no appearance by the Respondents, and little is known about their circumstances other than that they have 3 children living with them at the property. The Tribunal considered whether it was reasonable to grant the order. All the circumstances before the Tribunal were considered and given the Applicants need to sell the property to finance their relocation it appeared reasonable to grant the order.

### **Decision**

The Tribunal determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicants are entitled to sell the let property and intend to sell it for market value or at least put it up for sale within three months of the tenants ceasing to occupy it and it is reasonable on account of that fact to grant the order.

### **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.**

V Bremner

5<sup>th</sup> May 2023

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Legal Member/Chair

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Date