



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/22/2666**

**Re: 18 Potters Park Crescent, Forfar, DD8 1HH ("the Property")**

**Parties:**

**Linda Rodger residing at 62 Strathmore Avenue, Forfar, DD8 1ND; Emily Horne, and Lucy Horne residing at Infield, Cortachy Road, Northmuir, Kirriemuir, DD8 4PU ("the Applicants")**

**Helen Horne residing at Infield, Cortachy Road, Northmuir, Kirriemuir, DD8 4PU and Lesley Davie, Direct Lettings (Scotland) Ltd, 110 Commercial Street, Dundee, DD1 2AJ ('The Applicant's Representatives')**

**Aimee Porter and Kyle Reece McDonald, 18 Potters Park Crescent, Forfar, DD8 1HH ("the Respondents")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) Ann Moore (Ordinary Member)**

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

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 3<sup>rd</sup> August 2022. The application states that the ground for eviction was as follows:

Ground 1: The Landlord intends to sell the Property (mandatory).

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated. The commencement date of the tenancy was 11<sup>th</sup> June 2021.
- An email from MacHardy, Alexander and Whyte Solicitors to the Lucy Horne dated 7<sup>th</sup> September 2022 advising that they have been instructed to act in connection with the estate agency and the conveyancing associated with the sale.
- Notice to Leave dated 20<sup>th</sup> October 2021 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 24<sup>th</sup> April 2022.
- Email from the Applicants' Representative to the Respondents dated 20<sup>th</sup> October 2021 attaching the Notice to Leave.
- Email from Angus Council containing the details of the Section 11 Notice.
- Email from the Applicants' Representative dated 14<sup>th</sup> February 2023 with copy of a statement by Helen Horne.

## **2. Case Management Discussion**

This case called for a conference call Case management Discussion (CMD) at 10.00 on 17<sup>th</sup> February 2023.

The Applicants did not attend the CMD but their representatives Helen Horne and Lesley Davie attended on their behalf.

The Respondents attended the CMD.

No written responses had been received from the Respondents.

### **2.1 The Tribunal identified with the parties the following agreed facts:**

2.1.1. The Respondents are Tenants of the Property in terms of the lease between the parties. The start date of the Tenancy was 11th June 2021.

2.1.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

2.1.3. The Applicants are Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate ANG73866. Section B of the Land Certificate confirmed that the Applicants are heritable proprietors of the Property.

### **2.2 Preliminary Matters:**

2.2.1 Mrs Horne confirmed that she was not a landlord of the Property but she was a relative of and representative of the Applicants, Linda Rodger, Emily Horne and Lucy Horne. She was happy for the application to be amended to design her as Applicants' representative.

2.2.2 Mrs Taylor advised the Applicants' representatives that the Tribunal cannot consider the terms of the email from Lesley Davie dated 14<sup>th</sup> February 2023 as it had not been received seven days before the Case Management Discussion.

## 2.3 Oral Evidence

2.3.1 Helen Horne, the Applicants' representative, advised the Tribunal that her solicitors and estate agents McHardy, Alexander and Whyte are still instructed to act for the Applicants in connection with the sale of the Property. She also explained that Linda Rodger is her sister in law and she owns 50% of the Property. The remainder of the Property was owned by her late husband and he left his share of the Property to her daughters. Her daughter Sarah Horne no longer owns part of the Property as she had to sell her interest in the Property before she bought her own property. Her daughters Emily Horne and Lucy Horne need to sell the Property as they need the funds to purchase properties themselves. They are suffering as they cannot move on with their lives until the Property is sold. Her sister in law Linda Rodger also needs to sell the Property as she retires next year. However, she explained that she does have sympathy for the position the Tenants find themselves in.

2.3.2 Lesley Davie confirmed that she had phoned the Respondents on 20<sup>th</sup> October 2021 and told them that the Notice to Leave was being sent to them by email. She also hand delivered a copy of the Notice to Leave to the Tenants on 20<sup>th</sup> October 2021 at 4pm. She also has sympathy for the Tenants but her clients have been very patient. She confirmed that the Tenants rent is paid up to date.

2.3.3 The Respondents explained that they understand that the Applicants want to sell the Property. However, they cannot find a new home. They have been searching since they were served with the Notice to Leave. They have applied for approximately 15 properties but have been unsuccessful. They live in the Property alone. They have been in touch with the Council but have been categorised low on the housing priority list.

### 5. Requirements of Section 109 of the Procedure Rules.

**(a)** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

**(b)** The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The copy email from MacHardy, Alexander and Whyte, solicitors and estate agents dated 7<sup>th</sup> September 2022 was sufficient in its terms.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 20<sup>th</sup> October 2021 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 24<sup>th</sup> April 2022.

The Tenancy commenced on 11<sup>th</sup> June 2021. As at 20<sup>th</sup> October 2021 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore six months notice was required. The Landlord served the Notice to Leave on the Tenants by email and hand delivery on 20<sup>th</sup> October 2021 and correctly gave the Tenants a minimum of six months notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

**(c)** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

## **6. Decision**

6.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1.1 The Tribunal had a copy of the Landlord's title ANG73866 and established that the Applicants are heritable proprietors of the Property and they are entitled to sell the Property.

6.1.2 Evidence had been provided that the Applicants intend to sell the Property. The Tribunal accepted the following evidence:

6.1.2.1 The email from MacHardy, Alexander and Whyte, solicitors and estate agents which confirms that they are happy to act in respect of the sale of 18 Potters Park Crescent, Forfar.

6.1.2.2 The verbal evidence of Helen Horne when she explained the Applicants need to sell the Property to enable them to move on with their lives as they are unable to purchase their own properties until 18 Potters Park Crescent, Forfar has been sold.

6.1.3 The Tribunal find as a matter of fact that the Applicants intend to put the Property 18 Potters Park Crescent, Forfar up for sale once they obtain vacant possession.

6.1.4 The Tribunal find that it is reasonable to grant the eviction order as the Respondents have been given sixteen months notice that the Applicants need to sell the Property.

6.2 The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this

application as the Notice to Leave was served on the Respondent before 6<sup>th</sup> September 2022 and the application was received by the Tribunal before 28<sup>th</sup> October 2022.

6.3 Consequently the Tribunal determined that the order for possession of the Property be granted as Ground 1 of Schedule 3 of the 2016 Act had been met.

### **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.**

Jacqui Taylor

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Legal Member

17<sup>th</sup> February 2023