



**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/20/0723**

**Re: Property at 21 Lossie Place, Dundee, DD2 4AF (“the Property”)**

**Parties:**

**Mr Mark Leonard, 26 Deanbank Street, Dundee, DD2 2EA (“the Applicant”)**

**Miss Stephanie Wallace, 21 Lossie Place, Dundee, DD2 4AF (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent**

**Background**

- 1 By application dated 1 March 2020 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Notice to Leave dated 29 January 2020 stating that proceedings for possession will commence no earlier than 1 March 2020 and citing ground 1;
  - (ii) Screenshot of text message dated 29 January 2020 from the Respondent to the Applicant confirming receipt of the Notice to Leave;

- (iii) Copy Private Residential Tenancy Agreement between the parties;
  - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council;
  - (v) Copy Letter from the Chamber Practice dated 22 January 2020 to whom it may concern, confirming instruction from the Applicant to sell the property and advising that it would be marketed for sale within three months of the Respondent vacating.
- 2 The Tribunal was also in receipt of the Land Certificate for the property under Title Number ANG56376 which confirmed the registered owners as Mark Lee Leonard and Diane Leonard.
  - 3 By Notice of Acceptance of Application dated 24 April 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 7 August 2020. Due to the imposition of restrictions arising from the Covid-19 pandemic a direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 3<sup>rd</sup> July 2020.

### **Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 7 August 2020. The Applicant and the Respondent were both present. The Respondent was accompanied by her partner Mr Arran Latto. The Legal Member agreed that Mr Latto could represent the Respondent for the purpose of the Case Management Discussion.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. She then asked parties to address her on their respective positions.
- 6 The Applicant explained that his employment situation had changed shortly after the property had been let to the Respondent. He now needed the property back so that he could sell it. He had instructed the Chamber Practice as his agents and they would move forward with marketing the property for sale once the Respondent had vacated. He explained that the Respondent had not paid any rent for the property since January. Mr Latto was the guarantor for the lease.

- 7 Mr Latto then addressed the Tribunal on behalf of the Respondent. He listed a number of issues of disrepair at the property that the Applicant had failed to address, including lack of hot water, flooding and problems with the boiler. That was partly the reason rent wasn't being paid. He explained that the Respondent was keen to leave the property but didn't have the resources to do so and had no alternative accommodation to go to. She and her two year old son would be left homeless. The Legal Member asked if the Respondent had sought assistance from the local authority. Mr Latto confirmed that she had spoken to Dundee City Council and had been told that she would be immediately rehoused in temporary accommodation if she had to leave the property. The Respondent wanted to leave.
- 8 The Legal Member asked Mr Latto if he had any particular position regarding the Applicant's intention to sell the property. Mr Latto stated that the Respondent had redecorated the property after she moved in, and it was his belief that the Applicant didn't like this which prompted the decision to sell. Mr Leonard stated this was incorrect, and it was purely his personal circumstances that had led him to take that decision.
- 9 The Legal Member reiterated the provisions of ground 1 which the Tribunal required to consider. She advised that it appeared that the Respondent was not putting forward a stateable defence to the application being considered, albeit from the submissions put forward by Mr Latto there were may be other remedies she could explore. The Respondent was advised to take legal advice on that point. Mr Latto confirmed that the Respondent did not wish to remain in the property and would be happy for the order to be granted, as it would mean she could be rehoused by the local authority.

## Relevant Legislation

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **51 First-tier Tribunal's power to issue an eviction order**

(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.*

### **52 Applications for eviction orders and consideration of them**

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

### **54 Restriction on applying during the notice period**

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months,*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3, Part 1**

### **Landlord intends to sell**

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

*(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if 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.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

- 11 For the avoidance of doubt, the amendments to the provisions of the 2016 Act arising from the Coronavirus (Scotland) Act 2020 do not apply to this matter, on the basis that the Notice to Leave was served prior to 7 April 2020.

### **Findings in Fact and Law**

- 12 The parties entered into a Tenancy Agreement which commenced on 1 August 2019.
- 13 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 29 January 2020 the Applicant delivered a Notice to Leave to the Respondent by hand. The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 1 March 2020.
- 15 The Notice to Leave complies with the provisions of section 54 and 62 of the 2016 Act and is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 The Applicant is a registered owner of the property, which is held in joint names with his wife Mrs Diane Leonard. Mrs Diane Leonard consents to the application.
- 17 The Applicant has title to sell the property.
- 18 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 19 The Applicant has instructed the Chamber Practice to market the property for sale.
- 20 The reason for the sale of the property is due to a change in the Applicant's employment and personal circumstances.
- 21 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

## Reasons for Decision

- 22 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties.
- 23 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave had been delivered to the Respondent by hand on the 29 January 2020, and the Tribunal was satisfied that it had been received by her, having had sight of the screenshot text message of the same date confirming her knowledge of the proceedings. The Notice to Leave confirmed that proceedings would not be raised any earlier than 1 March 2020 therefore the Tribunal was satisfied that the Respondent had been given sufficient notice under section 54 of the Act, on the basis that she had been in the property for less than six months.
- 24 The Tribunal therefore had to consider whether the provisions of ground 1 had been met. The Applicant had submitted with his application a copy letter from the Chamber Practice confirming that they had been instructed by him to sell the property. He had explained at the Case Management Discussion that he required to sell the property due to a change in his circumstances. The Tribunal found the Applicant's verbal submissions on this point to be credible and there was nothing put forward by the Respondent to directly contradict or challenge his position. The Tribunal did not accept Mr Latta's position that the redecoration of the property by the Respondent had prompted the decision to sell. The Tribunal preferred the Applicant's submission, that it was his employment situation and personal circumstances that had prompted the decision to sell, shortly after letting the property to the Respondent. In any event, the Tribunal noted the Respondent's position that she was keen to leave the property, and was therefore content for an order to be granted to enable her to be rehoused by the local authority.
- 25 Ground 1 is a mandatory ground if the Tribunal accepts that the landlord intends to market the property for sale within three months of the tenant vacating the property and has title to do so. Based on its findings in fact, the Tribunal considered the ground to be met. Whilst there was much in what Mr Latta had said that would form the basis of a reasonableness defence to a repossession application, that was not available to the Respondent in this case. Accordingly the Tribunal was obliged to grant the order for repossession.
- 26 The Tribunal therefore made an order for repossession against the Respondent.

## **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.**

Ruth O'Hare  
**Legal Member/Chair**

07/08/2020  
**Date**