



**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 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/22/3461**

**Re: Property at 30 Cardonald Drive, Glasgow, G52 3JT (“the Property”)**

**Parties:**

**Mrs Janice Dalziel, 44 Park Green, Erskine, PA8 7HJ (“the Applicant”)**

**Miss Alison Crone, 30 Cardonald Drive, Glasgow, G52 3JT (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order.**

**Background**

The Applicant seeks an Eviction Order on the basis of ground 1 of Schedule 3 of the Act in that the Applicant is said to wish to sell the let Property.

The Application is accompanied by a copy of the tenancy agreement between the parties; the relevant notice to leave and a copy of the email sending it to the Respondent at the email address agreed in the tenancy; a copy of a hard copy letter said also to have been sent out with the notice to leave and the notice sent to the relevant local authority under s 11 of the Homelessness (etc) (Scotland) Act 2003.

The Respondent also emailed representations to the Tribunal in advance of the Case Management Discussion. These representations suggested that the Respondent wished to defend the Application and did so on the basis that she hadn't received the notice to leave.

### **The Case Management Discussion**

The Application called for a Case Management Discussion (CMD) by conference call at 2pm on 10 February 2023. The Applicant was represented by Mr Luke David of Purple Bricks plc. The Respondent was personally present. Neither party had any preliminary issues to raise and were happy that the Tribunal proceed with the CMD.

Ms Crone's defence to the Application was that she had not received the notice to leave.

She accepted that the Applicant probably did want to sell the Property but her position was that the irregularities with the notice to leave meant that, nevertheless, the Application should be refused.

The Tribunal explored this issue further with Ms Crone. Ms Crone accepted that she had provided the email address of [alisonbrooke99@gmail.com](mailto:alisonbrooke99@gmail.com) as being the contractual means of communication between the parties set out in the tenancy agreement. She indicated that she had said at the time that she signed the agreement that for any important things they should "*phone*" her.

Ms Crone also said that she was "*working that day*" and had skim read the tenancy at times. Ms Crone accepted that she had provided this email address to the Applicant and confirmed that she had in fact also initialled each individual page of the tenancy.

Ms Crone's position was that she did not then receive the email said to have sent to her on 16 June 2022 which attached the notice to leave. On discussing this further, Ms Crone revealed that she had stopped using that email address a couple of months after signing the tenancy and had never thought to mention that to the Applicant. Ms Crone stated that the reason she stopped using the email address was that she had changed phones but despite discussing this fully, The Tribunal could not follow the Respondent's logic.

Mr David also explained that the Applicant had posted out a hard copy of the notice to leave by letter dated 21 June 2022. The Respondent also denied ever receiving this.

The Respondent's position was that she first became aware that the Applicant wished her to vacate the Property when she received a phone call in September 2022. The Respondent's description of matters there was somewhat vague.

The Applicant pointed out that the Respondent appeared to stop paying rent from around the time when they say she would have received the notice. The Respondent denied this and said that she had stopped paying any rent from October 2022. The Respondent became somewhat bullish about this matter and was very keen to point out enthusiastically that this Tribunal, in her words, had “*nothing to do with rent arrears*”. For completeness on that issue though, the Tribunal did note that there was nothing said to indicate that any rent would be paid again soon. The Respondent made reference to being off work sick.

Having heard from parties and having considered the Application, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy which commenced on 1 February 2021;*
- II. *The parties agreed in that tenancy agreement that all communications, including regarding the service of any formal notices, should be carried out by email. The Respondent agreed that all communications and notices should be communicated to her by email to [alisonbrooke99@gmail.com](mailto:alisonbrooke99@gmail.com).*
- III. *On 16 June 2022, the Applicant emailed a notice to leave to the Respondent at the contractually agreed email address. The notice to leave was in terms of ground 1 of schedule 3 of the Act. The notice to leave indicated that the notice period before any Application would be submitted to the Tribunal for an Eviction Order would end on 13 September 2022;*
- IV. *The Applicant competently served a Notice to Leave on the Respondent and it is the Respondent’s own fault if she failed to check any emails sent to this address;*
- V. *The Applicant wants to sell the Property as she wishes to realise funds required to pay off personal debt;*
- VI. *Even if the Respondent’s position was to be accepted, then the Respondent knew that the Applicant wished her to vacate the Property from September 2022;*
- VII. *The Respondent is not paying any rent whatsoever and there is nothing to suggest that the Respondent has any intention of paying any further rent;*
- VIII. *The Applicant has complied with s11 of the Homelessness (etc) (Scotland) Act 2003.*

IX. *It is reasonable that an Eviction Order is granted.*

### **Reasons for Decision**

Having made the above findings in fact, the Tribunal decided that Ground 1 of Schedule 3 of the Act was established and that it was reasonable to make an Eviction Order. The Tribunal considered that there was no merit in the Respondent's position and that a final decision should be made summarily at the CMD rather than delayed which would only cause unnecessary expense and a likely increase in rent arrears that would be unfairly prejudicial to the Applicant. The Tribunal granted the Application and made an Eviction 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.**

**A. McLaughlin**

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**Legal Member/Chair**

**10 February 2023**

**Date**