

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/23/0113

Re: Property at Flat 1/2 (D), 3 Dalmeny Drive, Barrhead, G78 1JR (“the Property”)

Parties:

Mr Clive Burns, Mrs Eleanor Burns, 12 Pickering Court, Tewanin, Queensland, 4565, Australia (“the Applicants”)

Mr Stephen McWilliams, Flat 1/2 (D), 3 Dalmeny Drive, Barrhead, G78 1JR (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Eileen Shand (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 16th July 2019 the Applicants let The Property to the Respondent;
2. A notice to leave dated 26th July 2022 was served upon the Respondent intimating that the Applicants wished to recover possession of The Property as the Applicants intended to sell;
3. A notice in terms of Section 11 of the Homelessness Etc.(Scotland) Act 2003 was intimated to the local authority;
4. An application seeking an order for eviction was presented to the Tribunal on 11th January 2023;

THE CASE MANAGEMENT DISCUSSION

5. The Applicants were represented at the case management discussion by Mr Haq of Messrs Martin and Co, Letting Agents. A Miss Linda Nivison also attended as an observer. The Respondent

did not participate in the Case Management Discussion. The Tribunal delayed the start of the case management discussion until 14.09hrs in case the Respondent had any difficulties dialing in. He did not enter the proceedings at any stage. 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. Mr Haq advised the Tribunal that his clients wished an order for eviction. It is their intention to sell the Property. He advised that, in fact, the Property was previously marketed, an offer was received and accepted but, ultimately, the sale did not proceed as the Respondent did not vacate the premises. The Respondent had, apparently, intimated an intention to do so but then failed to do so resulting in the previous sale failing;
7. Mr Haq advised that the Applicants are now living in Australia and intend to continue residing there. That is why they wish to sell the Property and to “tie up loose ends” here. They do not have any other properties in Scotland;
8. The Tribunal made enquiry in relation to the Respondent. Mr Haq advised that he had limited information in relation to him, mainly due to the fact that the Respondent does not engage with his organisation. The Tribunal was advised that the Respondent has maintained rental payments although Mr Haq was of the view that the Respondent felt “hard done by” because the Applicants wish to sell the Property. To the best of the knowledge of Mr Haq the Respondent is single, is in employment, does not have any dependents residing with him at the Property. He is approximately 50 years of age. He has no known health issues and the Property has not been adapted in any way for the benefit of the Respondent;
9. On the basis of the information available and, in particular:-
 - The Respondent was made aware during July 2022 that the Applicants wished to sell the Property
 - The Respondent chose not to make any representations to the Tribunal in advance of the Case Management Discussion and did not participate in it
 - The Applicant previously indicated an intention to vacate the premises to enable the intended sale

- The Applicants have now emigrated to Australia and wish to tidy up / end their affairs in Scotland
- There are no circumstances known to the Tribunal to enable it to conclude that it would be unreasonable to grant an eviction order

the Tribunal considered that it was reasonable to grant an order for eviction;

FINDINGS IN FACT

10. The Tribunal found the following facts to be established:-
- a) By lease dated 16th July 2019 the Applicants let The Property to the Respondent;
 - b) A notice to leave dated 26th July 2022 was served upon the Respondent intimating that the Applicants wished to recover possession of The Property as the Applicants intended to sell;
 - c) A notice in terms of Section 11 of the Homelessness Etc.(Scotland) Act 2003 was intimated to the local authority;
 - d) The Applicants intend to sell the Property;
 - 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 forth and from the Property at Flat 1/2 (D), 3 Dalmeny Drive, Barrhead, G78 1JR 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 17 July 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

9th June 2023

Legal Member/Chair

Date