



**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/18/2371**

**Re: Property at 2 Benlister Terrace, Lamlash, KA27 8LN (“the Property”)**

**Parties:**

**Mr Paul Waters, 4 The Lodge, Alanbrooke Road, Larkhill, SP4 8PH (“the Applicant”)**

**Mr David Lydon, Ms Nicola Thom, 2 Benlister Terrace, Lamlash, KA27 8LN (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Part 1 of Schedule 3 to the said 2016 Act, in that the Landlord intends to sell the property.**

An application was submitted by the Applicant to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought a repossession order on the basis of Ground 1 of Part 1 of Schedule 3 to the said 2016 Act, in that the Landlord intends to sell the property.

A Case Management Discussion took place by way of conference call on 25 January 2019. The Applicant and the first-named Respondent were present. The first-named Respondent advised that the second-named Respondent was in hospital and unable to attend.

Mr Waters advised the Tribunal that he wished to agree an amicable way forward with the Respondent. The parties had attempted to engage with the Local Authority to allow the Respondent to be re-housed to allow the sale of the house, but no re-housing had come to fruition.

Mr Lydon advised that he was actively seeking alternative accommodation. There had been some difficulties with the paperwork served on him by Mr Waters, and the Local Authority had advised him that initial notices served on him were not valid.

He moved into the property on 1 December 2017 and was given a tenancy agreement which purported to be a Short Assured Tenancy. It was later discovered that this was not competent due to the requirement to provide a Private Residential Tenancy coming into force on 1 December 2017, under the terms of the said 2016 Act.

Mr Lydon had moved into the property under the knowledge that eventually the property was to be sold, however he considered that there had been agreement between the parties that he could remain living there until such time as it was sold. Mr Lydon accepted that he had been served with a Notice to Leave, which was hand-delivered by the Applicant's solicitor, on 1 July 2018. His position was that there was no evidence to accompany the Notice to Leave to evidence the basis of the ground being relied upon. Mr Waters accepted that there was no accompanying evidence with the Notice to Leave, as he had not yet instructed the Home Report nor engaged the services of an estate agent at that time. He had considered that this couldn't be done until the Notice had been served and the tenant had removed from the property. Following obtaining advice, the Applicant thereafter instructed the Home Report and engaged the services of estate agents and this evidence was submitted along with the application to the Tribunal.

Discussion took place between Mr Lydon and the Tribunal as to whether or not Mr Lydon wished to dispute the application on the basis that he did not consider that the Notice to Leave had been competently served and on that basis therefore the Applicant was not entitled to the Order sought. The Tribunal suggested that if he wished to dispute the validity of the Notice to Leave, a Hearing could be fixed for evidence to be heard on the matter. Following discussion, Mr Lydon confirmed that he did not wish to oppose the Order sought by the Applicant, and accordingly the Tribunal granted the repossession order as sought.

## **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Part 1 of Schedule 3 to the said 2016 Act, in that the Landlord intends to sell the property.

## 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.

F Watson

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Legal Member/Chair

25/1/19.  
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Date