

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/24/0373

Re: Property at Flat 1/1, 13 Holmhead Crescent, Glasgow, G44 4HG (“the Property”)

Parties:

Mr Graham Fisher, C/O Suite 1, Kirkhill House Office Park, 81 Broom Road East, Glasgow, G77 5LL (“the Applicant”)

Miss Michelle Flynn, Flat 1/1, 13 Holmhead Crescent, Glasgow, G44 4HG (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 25th May 2022, the Applicant let the Property to the Respondent.
2. On 14th September 2023, the Applicant served a notice to leave upon the Respondent intimating he wished vacant possession as she intended to sell the Property.
3. The notice was served by email communication. The Respondent acknowledged receipt of the notice on 14th September 2023.
4. The notice intimated that proceedings for recovery of possession would not be raised before 9th December 2023, a period of 86 days after the notice.
5. A notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 was intimated to the local authority.

6. The Applicant thereafter presented an application to the Tribunal seeking an order for eviction.
7. The Respondent lodged written submissions with the Tribunal. Her written submissions raised the following points: -
 - a) The notice to leave was not legally valid as it did not provide 84 clear days' notice of the intention to raise proceedings.
 - b) She did not accept that the Applicant genuinely intended to sell the Property.
 - c) If an eviction order is to be granted a delayed date for enforcement is requested.

THE CASE MANAGEMENT DISCUSSION

8. The Applicant participated in the case management discussion. He was also represented by Mr Girdwood of Guardian Letting and Sales Ltd. The Respondent participated in the case management discussion personally.
9. At the Case Management Discussion, Mr Girdwood confirmed that the Applicant did, indeed, wish an eviction order to be granted.
10. The Respondent was asked to clarify her position as her written submissions raised a legal issue in relation to the notice to leave, questioned the intentions of the Applicant but, separately, suggested that she was willing to consent to an order for eviction. The Respondent confirmed that that was still her position.
11. In relation to the notice to leave, the Tribunal is satisfied that 84 days notice has been given to the Respondent. The notice to leave was served by email communication, as authorised by the tenancy agreement, on 14th September 2024. It was received by the Respondent on that date and acknowledged by her by return email. The notice to leave intimated that proceedings would not be raised prior to 9th December 2023, being a period of 86 days after the date on which the notice was received. As a matter of fact, the tribunal proceedings were not raised until 23rd January 2024, that being 131 days after the date of the notice to leave. In the circumstances, the Tribunal indicated it was satisfied the notice to leave was properly served and gave more than the required minimum period of 84 days prior to the proceedings being raised.
12. The Respondent maintained her position that she doubted whether the Applicant truly intended to sell the Property. The Tribunal, however, was in receipt of correspondence from a bona fide estate agent confirming that instructions had been provided to market and sell the Property. Mr Girdwood, on behalf of the Applicant, confirmed that the intention was to sell the Property.
13. The Tribunal pointed out to all Parties that, if an application for eviction was presented and granted on the basis of an intention to sell the Property and the Applicant thereafter did not do so and, for example, relet the Property, the Respondent would be entitled to present an application to the Tribunal seeking compensation for wrongful eviction. Mr Girdwood advised that he was from a reputable sales and letting agent and he most certainly would not

become involved in any such ruse to have a tenant eviction improperly. His client, the Applicant, is a “professional landlord” and is aware of his responsibilities also. The intention is to sell the Property.

14. The Respondent sought confirmation and clarification of her right to present an application to the Tribunal for wrongful eviction if she consented to an eviction order and the Property was not subsequently sold. Her right to do so was explained to her. The Tribunal confirmed also, however, that if that occurred, the Tribunal would require to consider the facts and circumstances arising at that stage and could not determine now what the outcome of any such application would be.
15. The Respondent, thereafter, confirmed that she did, indeed, consent to an eviction order being granted. She explained that she no longer wished to reside in the Property. She explained that, due to other issues which had arisen (which the Tribunal did not require to have explained in any detail) she would prefer to no longer be a tenant of the Applicant.
16. She explained that she has a 6 year old daughter and requires to be conscious of her needs also. The Respondent’s position was, therefore, that she did not oppose an order for eviction in the circumstances but would wish the date on which an order could be enforced to be deferred for a period of time to ensure she was able to make arrangements for alternative accommodation for herself and her daughter.
17. After considering the matter, Mr Girdwood confirmed, on behalf of the Applicant, that he was willing to consent to the date of enforcement being deferred to a date which was thereafter agreed between the parties. The date agreed between the parties will be stated within the order for eviction to be separately issued but, for reasons discussed at the case management discussion, does not require to be repeated herein.
18. In the circumstances, having regard to the Respondent’s consent to the order sought, and the agreement between the Parties in relation to the date of enforcement, if that becomes necessary, the Tribunal granted such an order.

FINDINGS IN FACT

19. The Tribunal found the following facts to be established:-
 - a) By Lease dated 25th May 2022, the Applicant let the Property to the Respondent.
 - b) On 14th September 2023, the Applicant served a notice to leave upon the Respondent intimating he wished vacant possession as she intended to sell the Property. The notice was served by email communication. The Respondent acknowledged receipt of the notice on 14th September 2023.
 - c) The notice intimated that proceedings for recovery of possession would not be raised before 9th December 2023, a period of 86 days after the notice.
 - d) The Respondent received in excess of 84 days’ notice of the intention to raise proceedings.

- e) A notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 was intimated to the local authority.
- f) The Applicant intends to sell the Property.
- g) The Respondent agrees to an order for eviction being granted.

DECISION

The Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 1 of Schedule 3 to said Act

Order not to be executed prior to 12 noon on 15 January 2025

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

12 August 2024

Legal Member/Chair

Date