



**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/23/4701**

**Re: Property at 68 Sinclair Court, Kilmarnock, KA3 7TG (“the Property”)**

**Parties:**

**Fizzi Ltd, 40 Bank Street, Kilmarnock, KA1 1HA (“the Applicant”)**

**Miss Samantha Freer, 68 Sinclair Court, Kilmarnock, KA3 7TG (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the Property should be made on the ground that the Applicant wishes to sell the property and it is reasonable in all of the circumstances that the eviction be granted.**

2. This was a case management discussion (‘CMD’) in connection with an application for eviction in terms of rule 109 of the Rules and section 52 of the Private Housing (Tenancies)(Scotland) Act 2016. Mr Russell Dunlop attended on Behalf Of the Applicant. Mr Dunlop is a director of Fizzi Ltd. The Respondent did not attend and was not represented. The Tribunal had sight of the execution of service by Sheriff Officer on 1 August 2024 and was satisfied that the Respondent had received the appropriate notice in terms of Rule 24. The Tribunal proceeded with the CMD in her absence in terms of Rule 29.

## **Preliminary matter**

3. Mr Dunlop served the notice to leave by hand delivering it to the Respondent on 30 August 2023. The notice to leave was dated 2 September 2023. Mr Dunlop's reason for delivering the notice to leave 2 days before the date on the notice to leave was because it was his understanding that the tenant requires 2 days to read the notice.

## **The Applicant's position**

4. The Applicant is seeking an eviction order. Mr Dunlop received a message from the Respondent in the last few days stating that she has moved out of the property and will be handing back the keys at the end of the week. He understands that the Respondent has obtained a new tenancy and she may already have moved there with her daughter. Mr Dunlop is unaware of the age of the Respondent's daughter. There are rent arrears of around £4000. He has tried to sell the property with a sitting tenant rather than seeking an eviction but has been unsuccessful. He has engaged a solicitor to deal with the legal work involved in the sale. The mortgage interest in the property has increased from 1.4 % to 7.5%. It is no longer viable for him to rent the property and he now wishes to sell.

## **5. Findings in fact**

- The Applicant is the owner and landlord of the property.
- The parties entered into an agreement for let of the property on 21 February 2020.
- The agreed monthly rent was £500.
- Mr Russell Dunlop is a director of the Applicant.
- Mr Dunlop has a mortgage on the property.
- The mortgage interest rate has increased from 1.4 % in January 2023 to 7.5 %
- The monthly mortgage payment and other associated costs exceed the rent.
- The Respondent has accrued around £4000 of rent arrears.
- The Applicant wishes to sell the property and has instructed solicitors to act in its behalf.
- The Applicant served a valid notice to leave on the Respondent by Mr Dunlop hand delivering it to her on 30 August 2023.
- The notice to leave was dated 2 September 2023 and requested the Respondent to leave the property by 26 November 2023.

## **Reasons**

6. This was an undefended application for eviction. The Tribunal was satisfied that there was sufficient information before it to make a final decision and the procedure

has been fair. The Tribunal was satisfied that the notice to leave given to the Respondent on 30 August 2023 was valid. The notice to leave was dated 2 September 2023 and the date given for the Respondent to leave was 26 November 2023. This amounted to 85 days. The notice was given to the Respondent on 30 August 2023 by hand which effectively gave her 88 days notice. Mr Dunlop was aware of the provision of section 62 of the Act which provides that it is assumed the tenant will receive the notice 48 hours after it is sent. Instead of adding on time to the notice period from 26 November to 28 November 2023 for example, Mr Dunlop decided to give the notice to leave to the Respondent early. He said it was 2 days early but he in fact gave the notice 3 days early. The Tribunal was however satisfied that the notice to leave was valid. The Respondent was given 88 days' notice of the eviction. The Tribunal considered this to be a minor error in the notice to leave which did not materially affect the effect of the notice in terms of section 73 of the Act.

7. The Applicant has good reasons for wanting to sell and a solicitor has been engaged. The Respondent appears to have moved out of the property and has substantial rent arrears. The Tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction. The Tribunal accordingly granted the eviction.

### **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.**

**Lesley Anne Ward**

**4 September 2024**

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**Legal Member/Chair**

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**Date**