



**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/24/1029**

**Re: Property at 169 Keith Drive, Glenrothes, Fife, KY6 2HZ (“the Property”)**

**Parties:**

**Mr Michael Ford, Celia Ford, 59 Station Road, Thornton, Fife, KY1 4AY (“the Applicant”)**

**Mrs Margaret Wright, Mr Alex Wright, 169 Keith Drive, Glenrothes, Fife, KY6 2HZ (“the Respondent”)**

**Tribunal Members:**

**John McHugh (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be made in favour of the Applicant.**

Background

The Applicant is the landlord and the Respondent the tenant under a tenancy agreement dated 21 October 2019 in respect of the Property.

The Landlord has submitted an Application to evict the Respondent in order that he may sell the Property.

The Case Management Discussion

A Case Management Discussion (“CMD”) took place on 15 November 2024. Michael Ford and Margaret Wright were in attendance. Mrs Wright confirmed that she wished an eviction order to be granted as soon as possible in order that the Respondent could obtain a tenancy of a local authority house. She had been

advised that an eviction order would be required by the Council before they could accommodate the Respondent.

The Tribunal raised with the Applicant that the Notice to Leave dated 23 September 2023 appeared to be defective in that it was dated 23 September 2023 but not posted until 2 October 2023. This had the effect that the date by which proceedings could be raised (specified in the Notice as 23 December 2023) was wrong.

Mr Ford explained that he had drafted the Notice to Leave himself. He accepted that he had made a mistake. He accepted that the notice had not been sent until 2 October 2023. He invited the Tribunal to exercise any discretion which it could to relieve the Applicant of the consequences of his error. In particular, he was concerned that the process had already taken so long and that if the Tribunal did not accept the Notice in its present form, he would be forced to start again with a new notice (with an 84 day notice period) and then a delay of several months while a Tribunal application was determined.

This was all against the background that the Applicant and Respondent had an excellent landlord-tenant relationship. He was only resorting to the formal eviction process to help the Respondent achieve an eviction order so that they could obtain alternative housing from the Council. He wants to sell the house to realise retirement funds. In the circumstances, it would be in everyone's interests to grant the application.

Mrs Wright confirmed that this was her preferred position.

### Findings in Fact

The Applicant is the landlord and the Respondent the tenant in terms of a tenancy agreement dated 21 October 2019.

The Respondent has occupied the Property from 12 November 2019 to date.

The tenancy agreement purports to be a short assured tenancy but requires be regarded as a Private Residential Tenancy.

The Applicant wishes to sell the Property and has made initial arrangements to do so with an estate agent.

The Property is one of 14 owned by the Applicant.

The Applicant sent a Notice to Leave to the Respondent by recorded delivery post on 2 October 2023.

The Notice to Leave was dated 23 September 2023 and indicated that the Applicant would be entitled to begin eviction proceedings on 23 December 2023.

The Respondent wishes to end the tenancy and to move to alternative accommodation provided by the local authority.

The Respondent would prefer that an eviction order is granted as soon as possible to assist in the application to the local authority for housing.

It would be reasonable to grant an eviction order.

### Reasons for Decision

The Notice to Leave is defective in that it bears to be dated 23 September 2023 but was sent on 2 October 2023. In that respect, it fails to comply with the terms of section 62 of the 2016 Act.

The Tribunal has the discretion under section 73 of the same Act to determine that minor errors in a Notice to Leave should not render the Notice invalid. Minor errors are described as those which do not materially affect the effect of the document. Given that the effect of the error in this case was to communicate to the Respondent that proceedings would be able to be raised from 23 December 2023 (which was not correct because of the delayed posting), the Tribunal considers that this is material. The result is that section 73 cannot be employed in the circumstances of this case.

Mr Ford invited the Tribunal to use its powers under Rules 2 and 3 of the Tribunal Procedure Rules to grant the Application despite the defective nature of the Notice to Leave. Those Rules require the Tribunal to carry out its functions in accordance with the overriding objective. The overriding objective includes an obligation upon the Tribunal to deal with proceedings justly. This includes dealing with matters in a proportionate manner; seeking informality and flexibility; and avoiding delay.

In the unique circumstances of the present case where both parties have a strong desire that the Application is granted and where there would be adverse effects on both of them, and no benefit to anyone, if the order were refused, the Tribunal has determined to apply the overriding objective and to allow the application to be considered despite the defect in the Notice to Leave. It should be understood that in other cases featuring a similar defect in the Notice to Leave, it would be very unlikely indeed that the Tribunal would be prepared to consider the application.

Having dealt with the issue of the Notice, the Tribunal must now consider the substance of the Application. The Tribunal observed that the other formalities of the legislation had been observed. The Tribunal was satisfied that the Applicant wishes to sell having seen confirmation from the agent who is to be instructed and having heard Mr Ford's explanation on this topic that he is selling houses within his portfolio to generate funds for retirement.

The Tribunal then considered whether it would be reasonable to make the order sought. A powerful consideration in this regard is the Respondent's lack of opposition to the Application and, indeed, enthusiasm that it should be granted.

The Respondent's household consists of Mr and Mrs Wright; their son and grandson. Mrs Wright reported significant health difficulties, particularly on the part of her son and grandson. She had been in communication with the Council for some time to

arrange alternative accommodation and was comfortable that the Council would make provision which would be adequate for the family if eviction were to be ordered. The delay is causing her stress and she would like an order granted sooner rather than later.

Mr Ford wishes to sell this property to fund his retirement. It is one of 14 which he owns. This is one of the more valuable properties which is why he has selected it for sale at this time.

As regards any postponement of enforcement of the eviction order, the Respondent confirms that this is not required. The Applicant is said to be in no hurry and would not think of evicting until after Christmas. The Tribunal considers that it would be appropriate to formalise the Applicant's intention and so will permit enforcement after 15 January 2025.

### Decision

An order for possession of the Property will be made in favour of the Applicant. Enforcement of the Order will be delayed until 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.**

# J McHugh

John McHugh, Legal Member/Chair

Date 15/11/2024