



**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/20/2385**

**Re: Property at 179 8/2 Finnieston Street, Glasgow, G3 8HE (“the Property”)**

**Parties:**

**Burgh Properties Limited, 244 Gallowgate, Glasgow, G4 0TT (“the Applicants”)**

**Nasrullah Mohammed, 179 8/2 Finnieston Street, Glasgow, G3 8HE (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Mary Lyden (Ordinary Member)**

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

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.**

**Background**

This is an application for recovery of the Property. The application is dated 12<sup>th</sup> November 2020. The Applicant is seeking recovery under Ground 1, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020. This ground states that it is an eviction ground that the landlord intends to sell the let property. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions. The Applicant lodged productions. The Respondent neither made representations or lodged productions.

## **The Hearing**

A Hearing to determine the application was held on 6<sup>th</sup> January 2020 at 10 am. It was held by audio conference because of the coronavirus restrictions.

Mr Scott Runciman, solicitor represented the Applicant. Mr Fernando Cucchi, a director of Burgh Properties Ltd was present and gave evidence. Evidence was also provided by Mr Richard Loudon.

## **Preliminary Matters**

The Tribunal clerk advised that the Respondent had telephoned around 10 am and said that he wanted the matter to be dealt with the next day because he felt unwell. No vouching of this was produced and the Respondent did not make a formal request for the Hearing to be postponed. Mr Runciman said that he saw no reason for the Hearing not to continue. The tribunal considered the matter and determined that the Hearing should proceed.

Mr Runciman said that he intended to lead evidence from Mr Cucchi and Mr Richard Loudon and it was agreed that, for reasons of availability, Mr Loudon would give evidence first.

## **Documents before the tribunal**

1. Private Residential Tenancy Agreement dated 28<sup>th</sup> January 2020.
2. Copy Notice to Leave dated 4<sup>th</sup> May 2020 with relevant execution of service.
3. Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
4. Email from Applicants to Gilson Gray LLP dated 30<sup>th</sup> April 2020.
5. Letter from Allan and Harris dated 3<sup>rd</sup> November 2020.
6. Order for Payment from First-tier Tribunal for Scotland dated 21<sup>st</sup> September 2020.
7. Charge for Payment and execution dated 6<sup>th</sup> November 2020.
8. Rent arrears statement dated to 28<sup>th</sup> December 2020.
9. Letter of Engagement from Simpson and Marwick dated 15<sup>th</sup> September 2020.
10. Print from Companies House showing Director of Applicants to be Mr Fernando Paul Cucchi.
11. Print of Title Sheet for GLA171568 (the Property).

## **Findings in Fact**

1. The Applicants are the owners of the Property.
2. The Applicants and the Respondent entered into a Private Residential Agreement for the Property on 28<sup>th</sup> January 2020.
3. The start date for the tenancy was 28<sup>th</sup> January 2020.
4. The monthly rent for the Property is £1,120 per month.
5. The Applicants intend to place the Property for sale on the open market.
6. The Applicants have engaged estate agents to market the Property as soon as vacant possession is obtained.
7. The Applicants gave the Respondent Notice to Leave on 5<sup>th</sup> May 2020.
8. The Respondent is residing at the Property.

## Findings in Fact and Law

1. The Private Residential Agreement dated 28<sup>th</sup> January 2020 contains what were then mandatory eviction grounds including Ground 1: “The landlord intends to sell the property for market value within three months of the tenant leaving the property.”
2. The Notice to Leave which was dated and which was served on 5<sup>th</sup> May 2020 referred to Ground 1 which was being relied on by the Applicants as the reason for seeking recovery of the Property.
3. The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 9<sup>th</sup> November 2020.

## The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

*Section 51: First-tier Tribunal's power to issue an eviction order*

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

*(introduced by section 51)*

*Schedule 3, Part 1*

*Let property required for another purpose*

*Landlord intends to sell*

*1(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*

*(a) is entitled to sell the let property, and*

*(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

## **Evidence**

1. Mr Fernando Paul Cucchi, a director of the Applicants, said that the Respondent had taken on the tenancy of the Property on 28<sup>th</sup> January 2020. He said that the Respondent had been unable to provide references but had been vouched for by his accountant. Mr Cucchi said that the Respondent had not paid the rent after the first two months. He said that he decided to review his company's property portfolio and determined that the Property should be put on the market. The tribunal was referred to his email to Gilson Gray dated 30<sup>th</sup> April 2020 wherein he stated that the Property "carries very hefty communal charges which is running at circa £2,800 per annum along with this the property has a monthly loan of just under £800 pcm." Mr Cucchi said that the common charges seem to increase each year and he said that he thought that they had increased from around £1800 per annum in a matter of a few years. Mr Cucchi said that his company owns thirteen residential properties which are rented out but that it owns no other properties in the development where the property is situated. He said that the profit margin on the Property was extremely tight and he said that the burden of the fact that the Respondent was not paying rent was telling on his company.
2. Mr Cucchi referred to the letter from Allan and Harris estate agents to him dated 3<sup>rd</sup> November 2020 in which they state that they have been asked to act as selling agent for the Property. Mr Cucchi said that he later decided to instruct Simpson and Marwick, with whom he had a long relationship, to market the Property and the tribunal was referred to the terms of business letter of Simpson and Marwick dated 15<sup>th</sup> December 2020 in which they stated that they are happy to accept instructions to sell 8/2, 179 Finnieston

Street, Glasgow. Mr Cucchi said that, as soon as he had recovery of the Property, he would do what dilapidations works may be necessary and then instruct Simpson and Marwick to proceed with marketing the Property at the open market value.

3. Mr Cucchi said that his company owns the Property and that there is no restriction in it selling it.
4. Mr Cucchi said that he had instructed his solicitors to prepare the necessary Notice to Leave and thereafter to arrange service on the Respondent. He said that, as far as he knows, the Respondent is still living in the Property.
5. Mr Cucchi said that his company had obtained an order for payment against the Respondent for the sum of £6,440 on 21<sup>st</sup> September 2020 and that the arrears of rent were now in the region of £11,000. The tribunal was referred to the order of payment and a rent statement which had been lodged showing the level of arrears of rent at 28<sup>th</sup> December 2012 to be £10,920.
6. Mr Cucchi said that he knew nothing of the Respondent's circumstances and whether or not these had changed since the commencement of the tenancy. He said that there had been no contact from the Respondent since the Notice to Leave had been served. He said that the Respondent had not attended the case management discussion of the Tribunal at which the order for payment had been made.
7. Mr Richard Loudon said that he is a solicitor and the non- executive chairman of Simpson and Marwick. He said that the Applicants were long standing clients. He confirmed that Simpson and Marwick had issued the terms of business letter dated 15<sup>th</sup> December 2020 and that they would commence marketing the Property whenever the Applicants had vacant possession. Mr Loudon said that, from getting access, the usual length of time to get a property on the market would be seven to ten days. He said that the usual marketing process would be applied: obtaining a Home Report, preparing sales particulars, floor plans and a video and then exposing to the open market.

## **Submissions**

Mr Runciman invited the tribunal to grant the order. He said that the Applicants owned the Property and had the right to sell it. He asked the tribunal to accept the evidence of Mr Cucchi and Mr Loudon in relation to the Applicants' intention to sell the Property. He made reference to the fact that the tribunal had heard evidence that the Property would be put on the market within seven to ten days of vacant possession and that this would be at open market value.

Mr Runciman accepted that, in terms of the legislation, the tribunal would require to be satisfied that it is reasonable to grant the order. He said that the Respondent had had notice that the Applicants may seek recovery of the Property on the ground that

they wanted to sell it. He said that this is contained in the Private Residential Tenancy Agreement and that the Respondent would know that this would be a ground for eviction and that this ground was referred to in the Notice to Leave which had been served on the Respondent. He said that more than seven months had passed since the Notice to Leave had been served on the Respondent and that he had made no contact with the Applicants to discuss the matter. He said that the Respondent had ample time to find alternative accommodation. He also asked the tribunal to consider it significant that the Respondent had chosen not to make any representations on the application.

Mr Runciman submitted that it was reasonable for the order of eviction to be granted given the Applicants' desire to sell the Property because of the financial position as outlined by Mr Cucchi in his evidence.

### Deliberations and Reasons

The tribunal considered that it required to take a two stage approach in considering the application. Prior to the Coronavirus Act 2020, Ground 1 of Part 1 of Schedule 3 of the 2016 Act was a mandatory ground for eviction. Following the provisions of the 2020 Act, it was a discretionary ground and, before making the order, consideration required to be taken as to whether or not it was reasonable for it to be granted.

The tribunal found the evidence of Mr Cucchi and Mr Loudon to be credible.

The tribunal first considered if the requirements of Ground 1 were met.

It had no difficulty in finding that the Applicants are entitled to sell the Property. It accepted the terms of the Title Sheet and the evidence of Mr Cucchi in this regard.

The tribunal accepted the evidence of Mr Cucchi and Mr Loudon with regard to the intention to market the Property. It accepted that the process of marketing the Property would commence as soon as vacant possession was achieved (therefore within three months) and the evidence that the Property would be marketed at open market value. It accepted that Simpson and Marwick had been instructed to sell the Property.

In terms of the provisions of the Coronavirus Act 2020, the notice period for such an application is six months. The tribunal accepted that the Notice to Leave had been issued more than six months prior to the date of the application and that appropriate intimation had been given to the local authority under the Homelessness Etc. (Scotland) Act 2003.

In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. Mr Cucchi set out clearly the financial considerations which his company had taken into account in deciding to sell the Property. The tribunal considered it reasonable that a landlord may decide to sell a property where the profit margin on renting it out was not great and, in addition, where it was generating no income because a tenant was not paying rent. The tribunal was required to balance this against the Respondent's position on the application. It could not do so because the Respondent had failed to provide any information in this regard. He had the opportunity to submit representations and chose not to do so. He had not attended the Hearing or arranged for someone to represent him. The respondent had ample time during the notice period to find alternative accommodation and had not entered into discussions with the Applicants and during the whole of the notice period had not paid rent.

Weighing matters, the tribunal considered that it was reasonable to grant the order of 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.**

# **M. McA.**

**Martin J. McAllister  
Legal Member  
7<sup>th</sup> January 2020**