



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/18/2979**

**Re: Property at Turbine House Flat, West Cromwell Park, Almondbank, Perth, PH1 3LW (“the Property”)**

**Parties:**

**Mr John Fullerton, Mrs Margaret Fullerton, Old Mill Cottage, Cromwellpark, Almondbank, Perth, PH1 3LW (“the Applicants”)**

**Miss Caroline Currie, Turbine House Flat, West Cromwell Park, Almondbank, Perth, PH1 3LW (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondent from the property on the ground that the Applicants intend to sell the property.**

**Background**

1. By application dated 1 November 2018 the Applicants applied to the Tribunal for an order for the eviction of the Respondent from the property on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants provided the Tribunal with copies of email correspondence between the Applicants representatives and the Respondent together with a copy of the Notice to Leave and Section 11 Notice. The Applicants also provided a copy of the Tenancy Agreement.
2. By Notice of Acceptance dated 31 December 2018 a legal member of the Tribunal with delegated powers accepted the application and the case was remitted to a Case Management Discussion.

3. The Respondent's representatives McCash & Hunter, Solicitors, Perth submitted written representations to the Tribunal in advance of the Case Management Discussion. The Applicant's representatives, Aberdeen Considine, Solicitors, Stirling did not submit any further written submissions in advance of the Case Management Discussion which was held at The Inveralmond Business Centre, Auld Bond Road, Perth on 7 February 2019.
4. The Case Management Discussion on 7 February 2019 was attended by Mr Anthony Quin of Aberdeen Considine on behalf of the Applicants and by Ms Shona McLean on behalf of the Respondent. The parties themselves were not in attendance. This decision should be read in conjunction with the Notes on the Case Management Discussion of 7 February 2019 which sets out the parties positions and a copy of which is attached to this decision.
5. The Case Management Discussion on 7 February 2019 was adjourned to a further Case Management Discussion to take place on 26 February 2019 at 10.00 am at The Inveralmond Business Centre, Auld Bond Road, Perth in order that the Applicant's representatives could provide the Tribunal with a Letter of Instruction from the Applicants confirming their intention to market the property and also for discussions to take place between the parties representatives.
6. By email dated 25 February 2019 the Tribunal received from the Applicants' representatives a copy of marketing instructions signed by the Applicants. These were copied to the Respondent's representatives in advance of the Case Management Discussion.

#### The Case Management Discussion

7. The Case Management Discussion on 26 February 2019 was attended by Mr Quin on behalf of the Applicants and by Ms McLean on behalf of the Respondent. The parties were not present.
8. Ms McLean explained to the Tribunal that whilst she had received the copy of the marketing instructions she had been unable to take her clients instructions on the document prior to the Case Management discussion. She had sent a copy by email but was aware that her client had difficulties in the past with emails. She had tried to speak to her by telephone without success. Ms Mclean said that she had previously spoken to her client and anticipated that her position would remain that she did not believe that the Applicants intended to sell the property. Ms Mclean confirmed to the Tribunal that arrangements had been made for Aberdeen Considine's Property Manager, James MacKay, to attend at the property possibly with a surveyor on 1 March 2019 to inspect the property and possibly to take photographs.
9. In reply to a question from the Tribunal as to what evidence the Respondent had to support her contention that the Applicants did not intend to sell the property Ms McLean referred the Tribunal to the correspondence in the

Respondent's written submissions in which in August 2018 despite there having been issues around the respondent's boyfriend being at the property the Applicants had confirmed the Respondent could continue to live there.

10. For the Applicants, Mr Quin submitted that the test in Ground 1 of Schedule 3 of the 2016 Act had been met. A valid notice to leave had been sent to the Respondent and some four months had past and the Respondent remained in occupation of the property. The Tribunal had been provided with the documentation requested and there should be no further delay and the order sought should be granted.
11. In response to a question from the Tribunal Mr Quin explained that his property manager had been instructed to contact Ms McLean on the day following the previous case Management Discussion in order to arrange access to the property in order that the marketing instructions and property details could be completed well in advance of the adjourned case management discussion. Due to difficulties in obtaining access there had been a delay in having the marketing instructions signed.
12. Ms Mclean could not provide the Tribunal with any indication as to what additional evidence her client might produce if the Case Management discussion were adjourned to allow the Respondent more time to consider the terms of the marketing instructions.

#### Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 25 June 2018.
14. The applicants' solicitors Aberdeen Considine, Solicitors, Stirling sent a Notice to Leave to the Respondent by Recorded delivery post on 14 September 2018.
15. A Section 11 Notice of Proceedings was sent to the Local Authority on 1 November 2018
16. The Applicants are entitled to sell the property.
17. Prior to making their application to the Tribunal the applicants' daughter sent emails to the Respondent intimating the Applicants' intention to sell the property and to instruct a Home Report.
18. The Applicants have instructed Aberdeen Considine to market the property for sale and signed marketing instructions on 21 February 2019.
19. The terms of Ground 1 of Schedule 3 of the 2016 Act have been satisfied by the Applicants.

#### Reasons for Decision

20. There seems to have been some issues between the parties that initially were resolved with the Applicants indicating that the Respondent could remain in the property. However that would not prevent the Applicants subsequently deciding that they no longer wished to continue to rent the property and that a better alternative would be to sell it. The legislation does not require a landlord to have a specific reason for deciding to sell a rented property merely that they are entitled to sell and that they intend to sell it for market value or at least put it up for sale within three months of the tenant ceasing to occupy it.
21. The Applicants have for whatever reason decided they wish to sell the property and have instructed Aberdeen Considine to go ahead and market the property on the open market. They have taken and are continuing to take steps to obtain a Home Report. They have arranged for agents to serve the Notice to Leave and Notice of Proceedings to the Local Authority. The test in terms of the relevant legislation has therefore been met and the Applicants are entitled to the order sought.
22. The Tribunal considered whether there would be any merit in continuing the case further to allow the Respondent's representative more time to take instructions on the terms of the Applicants' marketing instructions. However, on Ms McLean's own admission it did not appear that any substantive defence would be likely to be forthcoming from any further adjournment. Furthermore the Respondent would have been well aware of the date of the Case Management Discussion and could have attended personally if she wished. In the circumstances therefore it did not appear to the Tribunal that any purpose would be served by continuing the case further.

#### Decision

23. The Applicants are entitled to an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the 2016 Act.

#### 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.**

G Harding

Legal Member/Chair

Date

26 February 2019