

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act")**

**Chamber Ref: FTS/HPC/EV/18/1803**

**Re: Property at West Backhill of Lethenty, Fyvie, Turriff, Aberdeenshire, AB53 8NL ("the Property")**

**Parties:**

**Jonathan Williams and Louise Allardyce, Corsehill Lodge, Parkhill, Newmachar, Aberdeenshire, AB21 7XA ("the Applicant")**

**Zoe Letham, West Backhill of Lethenty, Fyvie, Turriff, Aberdeenshire, AB53 8NL ("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for repossession of the Property against the Respondent**

**Background**

- 1 The Applicant submitted an application dated 12 July 2018 to the Tribunal under Rule 109 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent together with the following supporting documentation:-
  - a. Copy excerpt from STV News online dated 19 April 2018 regarding a police incident at Keith, Moray;
  - b. Copy texts between the Applicant and the Respondent dated 2 May 2018;
  - c. Copy excerpt from ASPC.co.uk with sale particulars for the Property;

- d. Copy photographs dated 8<sup>th</sup> July 2018 showing various damage at the property;
  - e. Copy letter from Studio to the First Named Applicant dated 5 June 2018 regarding alleged fraud;
  - f. Copy letter from Ace to the First Named Applicant dated 5 June 2018 regarding alleged fraud;
  - g. Copy letter from Experian to the First Named Applicant dated 6 June 2018 regarding alleged fraud;
  - h. Copy letter from La Redoute to the First Named Applicant dated 30 May 2018 regarding alleged fraud;
  - i. Copy letter from Ace to the First Named Applicant dated 28 May 2018 in response to attempted application for credit;
  - j. Copy letter from Freemans to the First Named Applicant dated 28 May 2018 in response to attempted application for credit;
  - k. Notice to Leave dated 9<sup>th</sup> June 2018 citing grounds 1 and 14, that the landlord intends to sell the house and the tenant has engaged in antisocial behaviour;
  - l. Copy Tenancy Agreement between the Applicants and the Respondent dated 6<sup>th</sup> May 2018
  - m. Copy proof of recorded delivery dated 11 June 2018
- 2 By Notice of Acceptance of Application dated 14<sup>th</sup> August 2018, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The Case Management Discussion was thereafter assigned for 28<sup>th</sup> September 2018.
- 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 6 September 2018.
- 4 On 20<sup>th</sup> September 2018 and 25<sup>th</sup> September 2018 the Applicant submitted further written representations alleging ongoing criminal and antisocial behaviour by the Respondent and her family at the Property and at neighbouring properties. The representations included the following supporting documentation:-
- a. Chronological timeline of antisocial conduct and damage at the Property;
  - b. Copy excerpt from Respondent's Facebook page;
  - c. Photographs showing damage to neighbouring property and damage to the Property dated August 2018;

The Applicants requested the application be amended to include the alleged breaches of contractual obligations under the tenancy agreement, in terms of ground 1 of Schedule 3 of the 2016 Act.

- 5 On 27<sup>th</sup> September 2018, a postponement request was submitted to the Tribunal by Black & Markie, Solicitors on behalf of the Respondent. The postponement was sought in order to give them further time to consider the papers and the Respondent's position in the matter. The Applicants opposed

the request. The Tribunal noted that the Respondent had been served with the papers by Sheriff Officers on 6 September 2018, albeit she had stated to the officers that she was already in receipt of the application paperwork. She had therefore had ample time to instruct a Solicitor to appear on her behalf. Despite this the postponement request had been made the afternoon before the day of the Case Management Discussion. In any event, the Tribunal noted the Respondent had advised Sheriff Officers that she would be attending the Case Management Discussion. The Tribunal therefore considered it was in the interests of both parties to proceed with the Case Management Discussion and took the view that the Respondent would still have the opportunity to attend and address the Tribunal if she wished. The Tribunal therefore refused the postponement request.

### **Case Management Discussion**

- 6 A Case Management Discussion took place on the 28 September 2018. The Applicants were present.
- 7 The Tribunal considered it would be prudent to hear submissions on the circumstances surrounding ground 1 in the first instance, as it would be obliged to grant the order if that ground was met. This was in contrast to grounds 11 and 14 which were discretionary.

### **Submissions by the Applicant**

- 8 The Applicants advised that the property had previously been on the market in 2016 however it had not sold. Accordingly the Applicants had accepted they would have to consider a new strategy, which including the renting of the property. However in light of their experience with the Respondent they had decided they no longer wished to be Landlords and therefore the property was back on the market. The Applicants produced the schedule for the property in support of their position, which went alongside extract from ASPC that had been lodged with the application. The Applicants confirmed that a home report had been obtained as part of the sale process.

### **Submissions by the Respondent**

- 9 The Respondent accepted the property was on the market. It was her understanding that the property had been on the market since 2014. She thought it had been taken off prior to her taking up the tenancy. She made various allegations against the Applicants regarding police and social work involvement. The Respondent advised that she had no intention of staying in the property and was actively looking for alternative accommodation.

### **Findings in Fact**

- 10 The parties entered into a Tenancy Agreement in respect of the Property which commenced on 25 May 2018.
- 11 The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 12 In terms of Clause 3 of the said Tenancy Agreement the Respondent agreed to accept all communication, including service of notices, by personal delivery or recorded delivery.
- 13 On 9 June 2018 the Applicant's Representative served a Notice to Leave on the Respondent by recorded delivery. In terms of the said Notice, the Applicant sought an eviction order on grounds 1 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 14 The Applicants are the registered owners of the Property under Title Number ABN3688.
- 15 The Applicant intends to market the property for sale within three months of the Tenant ceasing to occupy it.

#### **Reasons for Decision**

- 16 Having considered the verbal and written representations from both parties the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.
- 17 The Tribunal accepted that the Respondent had been served with a valid Notice to Leave under section 52(3) of the 2016 Act specifying grounds 1 and 14 of Schedule 3 of the Act as the relevant ground for eviction. The Tribunal also considered on the face of the evidence provided by the Applicants that it would be reasonable to allow the application to be amended to include ground 11, as the alleged breaches of the tenancy agreement were of a serious nature and photographic evidence had been provided by the Applicants to support the claims. The Tribunal therefore had to consider whether the provisions of those three grounds had been satisfied.
- 18 Ground 1 provides as follows:-
  - “(1) It is an eviction ground that the landlord intends to sell the let property.*
  - (2) The First-tier Tribunal must find that the ground named by subparagraph (1) applies if the landlord-*
    - (a) is entitled to sell the 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.*

(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.”*

- 19 Ground 1 is a mandatory ground for repossession. There is therefore no discretion afforded to the Tribunal if the provisions of the ground are met. Accordingly the Tribunal proceeded to consider this ground first as it would be obliged to grant the order if it found the ground had been met.
- 20 The Tribunal was satisfied on receipt of the title sheet for the property, that the Applicants were entitled to sell the property.
- 21 The Tribunal was also in receipt of a copy extract from ASPC.co.uk which purported to be a sales advertisement for the Property. The extract confirmed the particulars for the Property and included a home report. The Applicant had also submitted a schedule for the property at the Case Management Discussion. The Tribunal therefore accepted the Applicants' position that they were in the process of selling the house. The sales advertisement and home report was clear evidence of their intention. It was not disputed by the Respondent that the property was on the market.
- 22 The Tribunal therefore concluded on the basis of the evidence before it that the provisions of ground 1 had been met and determined to make an order for repossession. The Respondent had accepted the property was being marketed for sale and in any event the Tribunal considered the evidence produced by the Applicants to be clear and unequivocal evidence as to the Applicants' intention. The Tribunal was also aware that there were remedies available to the Respondent under the 2016 Act if it transpired that the Applicants' intentions were insincere.
- 23 On the basis that the Tribunal had found ground 1 to be satisfied, it did not require to make any further findings regarding grounds 11 and 14 and the allegations of antisocial conduct and damage at the Property. Accordingly it determined that a hearing was not required in those matters.
- 24 The Tribunal was conscious of the postponement request from the Respondent and gave consideration to whether the granting of the order would prejudice her in any way. Whilst the order would require her removal from the property, the Tribunal took the view that the provisions of ground 1 were clearly met. She had conceded the property was for sale, and in any event had stated that it was her intention to remove from the property. Accordingly the Tribunal considered that any adjournment to the proceedings

would only cause undue delay, given the Respondent's position on the matter. The Tribunal therefore determined, having regard to all the circumstances of the case, to grant the order for repossession.

### **Decision**

- 25 The Tribunal determined to make an order for repossession of the Property against the Respondent.

### **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.

**Ruth O'Hare**

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Legal Member/Chair

28/9/18.  
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Date