



**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/19/3603**

**Re: Property at 65 Eglinton Drive, Eaglesham, Glasgow, G76 0LA (“the Property”)**

**Parties:**

**SJM Properties Ltd, Parkwoodhill, Cheapside Street, Eaglesham, Glasgow, G76 0NS (“the Applicant”)**

**Mr Mark Shields, Mrs Connie Shields, 65 Eglinton Drive, Eaglesham, Glasgow, G76 0LA; 65 Eglinton Drive, Eaglesham, Glasgow, G76 0LA (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

By application, received by the Tribunal on 11 November 2019, the Applicant sought an Eviction Order against the Respondent. The Ground relied on was Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), namely that the landlord (the Applicant) intends to sell the Property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 27 August 2018 at a rent of £1,000 per month and a Notice to Leave, dated 12 August 2019, informing the Respondent that the Applicant was seeking eviction under Ground 1 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 7 November 2019, with evidence of delivery by Royal Mail of the Notice to Leave on 13 August 2019. The application was also accompanied by a copy of a letter, dated 7 August 2019, to the Applicant from Property Bureau, Bearsden, confirming the Applicant’s

instructions to them to market the Property and advising that the Home Report should not be done till the Respondent moved out, as the date the Report was made live was important.

On 6 December 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 27 December 2019.

The Respondent provided lengthy written representations on 26 December 2019. They referred in part to a Notice to Leave served by the Applicant in December 2018. With regard to the Notice to Leave the Respondent had received on 13 August 2019, the Respondent said that the Applicant had provided no evidence at that time of his intention to sell the Property, the letter from Property Bureau only having been submitted with the application to the Tribunal. The Respondent also referred to the conduct of the Applicant on 17 August 2019 and to emails received from the Applicant on 13 September 2019, which stated that the tenancy would end on 7 November 2019 and setting out the process for a check out inspection on that date at 11.30am. The Respondent had taken advice from Shelter Scotland, who had said that the e-mails were untrue and false and that the Respondent did not need to vacate the Property without an Eviction Order from the Tribunal.

The Respondent's representations also included matters relating to payment of rent. A Case Management Discussion was held on 13 January 2020. The Respondent had advised the Tribunal that morning to request a postponement as Mr Shields had been admitted to hospital. The Respondent later provided the Tribunal with satisfactory evidence of Mr Shields' admission to hospital, but in the absence of that on 13 January, the Case Management Discussion went ahead.

The Applicant, represented by its sole Officer, Mr Steven Molina, told the Tribunal that the Property had increased significantly in value and he wanted to realise the equity. It was also close to Mr Molina's own home in a small village and his preference was to have his rented properties outwith the immediate area.

The Tribunal continued the Case Management Discussion to a later date, but noted that the written submissions from the Respondent focused on the behaviour of the Applicant and alleged harassment, but that it was unclear what the defence to the present action was. The submissions did not directly address the question of the Applicant's intention to sell or any technical defence to the action. Accordingly, the Tribunal instructed the Respondent to lodge in advance a brief note of the defence to the present application, which must set out the basis on which the Respondent was seeking to argue that it was not the Applicant's intention to sell the Property or any technical argument on which the Respondent sought to rely.

The Respondent made further written submissions to the Tribunal, disputing Mr Molina's stated preference that his company's rented properties should be outwith the immediate area of his home. The Respondent stated that, at the time of the Case Management Discussion on 13 January 2020, another property in Eaglesham was being advertised by Property Bureau for rent and, on investigation, it appeared that the registered landlord for the property at that time was Mr Molina's wife. Mrs Molina's landlord registration number also appeared on the tenancy agreement for the present Property, although it now appeared under the name of the Respondent in the landlord registration system. The argument put forward by the Respondent was that Mr Molina's statement that a further reason for the proceedings was to avoid renting locally was untrue.

On 17 February 2020, the Applicant provided the Tribunal with a copy of a letter of engagement from Franchi Law, Glasgow, dated 14 February 2020, thanking the

Applicant for instructing them to act in connection with the sale of the Property and setting out their Terms of business.

### **Case Management Discussion**

The continued Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 26 February 2020. The Applicant, represented by Mr Molina, and the Respondent, Mr and Mrs Shields, were present. The Respondent accepted that Ground 1 was a mandatory ground for an Eviction Order but was concerned to ensure that the proper due process had been followed, as the outcome involved leaving the family home in a small village where the Respondent's children also went to school. The Respondent repeated the view that the fact that another property was being advertised by Mrs Molina tended to undermine the assertion by Mr Molina that he preferred his company's rented properties to be outwith the immediate vicinity of his home. Mr Molina commented that there was no equity in that property. No further evidence was made available to the Tribunal at the Case Management Discussion.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies.

Ground 1 of Schedule 3 to the 2016 Act provides that it is an Eviction Ground that the landlord intends to sell the Property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell the let property and 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. Evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale of the let property or a recently prepared Home Report.

The Tribunal considered carefully all of the written submissions made by the Parties. The Respondent had contended that the Applicant should have included a copy of the letter from Property Bureau with the Notice to Leave but the view of the Tribunal was that an Applicant was not required to attach it to the Notice to Leave. It was for the Applicant to provide such evidence to the Tribunal at a Case Management Discussion or Hearing and the Applicant had done so.

The Tribunal regarded the Respondents' written submissions regarding the Applicant's conduct and issues in relation to the rent as irrelevant to the present application.

The only element of the written submissions which was relevant to the application was the contention that, when Mr Molina told the Tribunal that a further ground for wanting to sell was that he preferred his rented properties to be outwith the immediate area of his home, his wife was advertising another property for rent locally. The view of the Tribunal was that, as the other property was not being advertised by the Applicant, and the registered landlord at that time appeared to be Mrs Molinari, the Tribunal could not hold that this situation undermined the

Applicant's stated intention to sell the Property for the reasons stated in the application, namely that the Applicant wished to realise the equity in the Property. Even if the Tribunal had regarded the advertising on the other property as having a bearing on proceedings, the Tribunal would not have decided the application differently, as there could be a number of reasons for deciding to re-let a property rather than sell it and Mr Molina had indicated one of them to be the case, namely that there was no equity in that property.

The Tribunal had seen a copy of the Land Certificate which showed that the title to the Property stood in the name of the Applicant, so the Applicant was entitled to sell it and was satisfied from the letters from Property Bureau and Franchi Law that the Applicant's intention to sell was settled and fixed. Accordingly, the Tribunal determined that the requirements of Ground 1 of Schedule 3 to the 2016 Act had been met and the Tribunal was bound to issue an Eviction Order against the Respondent.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order 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.**

G.Clark

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**Legal Member/Chair**

26 February 2020  
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**Date**