



**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**

**Chamber Ref: FTS/HPC/EV/18/1119**

**Re: Property at 6 Bacchante Way, Kingseat, Aberdeen, AB21 0AX (“the Property”)**

**Parties:**

**Mr Nathaniel Leadbitter, 19 Braecroft Drive, Westhill, Aberdeen, AB32 6FF (“the Applicant”)**

**Mr Thomas Boyle, 6 Bacchante Way, Kingseat, Aberdeen, AB21 0AX (“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 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.

**Case Management Discussion**

- 2 A Case Management Discussion took place on the 2<sup>nd</sup> August 2018 at the Credo Centre, Aberdeen. Mr Doran from Raeburn Christie Clark and Wallace (“the Applicant’s Representative”) appeared on behalf of the Applicant. The Respondent was present.

### **Submissions by the Applicant**

- 3 The Applicant's Representative addressed the Tribunal on the relevant provisions of the Private Housing (Tenancy) (Scotland) Act 2016 ("the 2016 Act") and submitted that these had been complied with. The Applicant had served Notice to Leave on the Respondent by email dated 9 March 2018, citing ground 1 of Schedule 3 of the 2016 Act as the ground for eviction. The Respondent had been entitled to live in the Property for less than 6 months therefore 28 days notice was the statutory requirement. The application had been lodged with the Tribunal on 3<sup>rd</sup> May 2018 which was prior to the expiry date of the notice. Accordingly the application was competent.
- 4 The Applicant's Representative pointed out that the ground was mandatory and therefore the Tribunal should grant the order sought. The Applicant was entitled to sell the property as the registered owner and reference was made to the title sheet which had been lodged confirming this. The property was not a matrimonial home.
- 5 The Applicant's Representative further pointed out that evidence in the form of emails between the Applicant and the firm of the Applicant's Representative confirmed the Applicant's intention to sell the house. The Applicant had originally met with the firm in September 2017 and had agreed following advice from the estate agent that he would wait until spring 2018 to market the property, when he would be in a better position. This was confirmed in the emails between the Applicant and June Calder dated 27 April 2018 which had been lodged with the application. The Applicant's Representative therefore submitted that ground 1 had been met and there was no requirement for a hearing.

### **Submissions by the Respondent**

- 6 The Respondent conceded that he was in a weak position given that the Applicant was the owner of the property and therefore entitled to sell. He outlined the history of the tenancy, and submitted that at no point had the Applicant said that he intended to market the property in the spring. The Applicant had employed Margaret Duffus Leasing to undertake the arrangements at the start of the tenancy and they were not aware of his intentions in this regard. The Respondent had discovered the Applicant's intentions during a call with his utility provider.
- 7 The Respondent referred to an application he had pending against the Applicant under the Tenancy Deposit Scheme (Scotland) Regulations 2011. The Applicant had breached his obligations by failing to place the deposit with a scheme. The Respondent had hoped that application would have been determined prior to the Case Management Discussion however Sheriff Officers had been unable to serve the papers on the Applicant.
- 8 The Respondent was disappointed over the lack of transparency on the part of the Applicant. He had hoped to settle in the Property but was now unable to

do so and had been subject to months of anxiety as a result. He had tried to speak to the Applicant about the situation in February 2018 after discovering his intentions but the Applicant had hung up the phone on him. Having now seen the correspondence between the Applicant and the firm of the Applicant's Representative he accepted that the Applicant intended to sell the Property.

### **Findings in Fact**

- 9 The parties entered into a Tenancy Agreement in respect of the property at 6 Bacchante Way, Kingseat, Aberdeen which commenced on 1<sup>st</sup> December 2017.
- 10 The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 11 In terms of Clause 3 of the said Tenancy Agreement the Respondent agreed to accept all communication, including service of notices, to the email address [tommy.boyle0168@yahoo.com](mailto:tommy.boyle0168@yahoo.com).
- 12 On 9 March 2018 the Applicant's Representative served a Notice to Leave on the Respondent by email to the agreed address. In terms of the said Notice, the Applicant sought an eviction order on ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 13 The Applicant is the registered owner of the property at 6 Bacchante Way, Kingseat, Aberdeen under Title Number ABN108756. The property is not a matrimonial home as defined by the Matrimonial Homes (Scotland) Act 1981. The Applicant is therefore entitled to sell the Property.
- 14 The Applicant intends to market the property for sale within three months of the Tenant ceased to occupy it.

### **Reasons for Decision**

- 15 Having considered the verbal and written representations from the Applicant, the Applicant's Representative and the Respondent 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.
- 16 The Tribunal accepted that the Respondent had been served with a valid Notice to Leave under section 52(3) of the 2016 Act specifying ground 1 of Schedule 3 of the Act as the relevant ground for eviction. The Tribunal

therefore had to consider whether the provisions of ground 1 had been satisfied.

17 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 sub-paragraph (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."*

18 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.

19 The Tribunal was satisfied on receipt of the title sheet for the property and having had confirmation that the property was not a matrimonial home, that the Applicant was entitled to sell the property. This was not disputed by the Respondent.

20 The Tribunal was also in receipt of a letter from the firm of the Applicant's Representative to the Applicant dated 6 September 2017 which confirmed the Applicant's instruction to market and sell the property together with email correspondence between the Applicant and the firm dated 27 April 2018 agreeing to proceed with the marketing of the property. The Applicant's Representative had verbally submitted that the Applicant had met with his firm in September 2017 and had agreed to wait until spring to proceed with the sale when the market would be in a better position. The Tribunal accepted this as a credible version of events and that it was therefore the Applicant's intention to sell the property within three months of the tenant vacating.

21 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 eviction.

- 22 For the avoidance of doubt the Tribunal noted the Respondent's disappointment with the way in which the tenancy had been handled by the Applicant and the uncertainty and anxiety this had caused him. The Tribunal further noted the Respondent had a pending application against the Applicant under the Tenancy Deposit Scheme (Scotland) Regulations 2011. However the Tribunal was clear that these matters were not relevant to the consideration of the application before it..

### **Decision**

- 23 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, Legal Member

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Legal Member/Chair

2/8/18  
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Date