

**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) Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act")**

**Chamber Ref: FTS/HPC/EV/20/0109**

**Re: Property at 20 Sharpe Place, Montrose, DD10 9FH ("the Property")**

**Parties:**

**Mr Grant Cameron, Mrs Yvonne Cameron, Tamarisk, Millfield Feus, Arbroath, Angus, DD11 2QJ ("the Applicants")**

**Mr Graeme McIntosh, 20 Sharpe Place, Montrose, DD10 9FH ("the Respondent")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted against the Respondent.**

**Background**

1. By application dated 10 January 2020 the Applicants seek an eviction order in terms of Section 51(1) and ground 1 of Schedule 3 of the 2016 Act. A copy tenancy agreement, Notice to leave, email from the Applicants confirming they wish to sell the property and Notice to the local authority in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 17 February 2020. Both parties were notified that a case management discussion ("CMD") would take place on 16 March 2020 at Caledonian House, Dundee, which they were required to attend.

3. The application called for a CMD on 16 March 2020. A related application under Chamber reference HPC/CV/20/0113 also called for a CMD. The Applicants attended and were represented by Mr Skea, Property Manager. The Respondent did not attend and was not represented. The Respondent did not contact the Tribunal in advance of the CMD and did not lodge written representations.

### **Case Management Discussion ("CMD")**

4. Mr Skea advised the Legal Member that neither he nor the Applicants have had any recent contact from the Respondent. However, he is still occupying the property and the Applicants are seeking an eviction order.
5. The Legal Member noted that a Notice to Leave was served on the Respondent by Sheriff Officer. The ground stated in the notice and the application is ground 1 of Schedule 3 – that the Landlord intends to sell the let property. The Legal member noted that the only evidence lodged with the application in support of the ground is an email from the second Applicant to Mr Skea which states " I would like to confirm that my husband and I have decided to put the above flat on the market for sale. To this end we would like you to move forward with this on our behalf and ask that you put the necessary steps in place to that this can be achieved". Mr Skea advised the Legal Member that it has not been possible to instruct a home report for the property. The Tenant has not allowed access. It is also anticipated that work will be required to be carried out before a home report is instructed and the property placed on the market for sale. This is because there have been reports from neighbours that the house is frequented by numerous visitors, is being used as a party house and there is likely to be damage to the property. The Applicants advised the Legal Member that they bought the property in 2008, as a retirement investment. They have never had problems with their tenants, until the Respondent moved in in September 2019. He has not paid rent since October 2019. There have been complaints regarding noise and visitors. He is refusing to provide access. They have therefore decided to sell the property, rather than seeking an eviction order with a view to re-letting it. Once they have the property back, they will attend to any damage caused before instructing a home report and placing the property on the market for sale.

### **Findings in Fact**

6. The Applicants are the owners and landlords of the property.
7. The Respondent is the tenant of the property. He has occupied the property since 9 September 2019.
8. The Applicants served a Notice to Leave on the Respondent on 27 November 2019.

9. The Applicants intend to sell the property.

### **Reasons for decision**

10. Section 52(3) of the 2016 Act states that an application for an eviction order must be accompanied by a copy of a Notice to leave which has been given to the tenant. Section 54(1) of the 2016 Act stipulates that a Landlord may not apply to the Tribunal for an eviction order until the expiry of the relevant period in relation to the Notice to leave. Section 54 (2) states "The relevant period in relation to a Notice to leave –(a) begins on the day the tenant receives the notice to leave from the landlord, and (b) expires on the day falling – (i) 28 days after it begins if subsection (3) applies. Subsection 3 states "This subsection applies if (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months".
11. The Legal Member is satisfied that the Notice to leave was served on the Respondent on 27 November 2019. As the tenancy started on 9 September 2019, the Respondent had been entitled to occupy the property for less than six months. The Legal Member is satisfied that the Notice to Leave gave the Respondent the required period of notice, being 28 days, and that the application was submitted to the Tribunal after the expiry of that period. The Legal Member also notes that a Section 11 Notice was lodged with the application to the Tribunal as required by Section 56 of the 2016 Act.
12. The application for an eviction order is based on ground 1 of Schedule 3 of the 2016 Act. This states "(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 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". The Legal Member is satisfied from the information provided at the CMD by Mr Skea and the Applicants, that they intend to put the property on the market for sale, once they have recovered possession of the property and carried out essential repairs which will be needed before it can be marketed for sale. The Legal member is satisfied that the ground for eviction has been established.
13. The Legal Member determined that the legal requirements of the 2016 Act have been met and that the ground for eviction has been established. An eviction order is granted.

### **Decision**

14. The Tribunal determines that an eviction order should be granted against the respondent in favour of the Applicants.

## **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.**

**Ms Josephine Bonnar**

**16 March 2020**

**Josephine Bonnar, Legal Member/Chair**