



**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/19/3224**

**Re: Property at Flat 1/2, 28 Windsor Crescent, Clydebank, G81 3AE (“the Property”)**

**Parties:**

**Mr Mike Rafter, 18 Overtoun Road, Clydebank, G81 3RE (“the Applicant”)**

**Miss Karen Johnston, Flat 1/2, 28 Windsor Crescent, Clydebank, G81 3AE (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**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 9 October 2019, the Applicant sought an Eviction Order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the Applicant landlord intends to sell the Property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 20 February 2018 at a monthly rent of £475 and a Notice to Leave, dated 8 May 2019, with proof of posting on 9 May 2019. The Notice to Leave stated that the Ground relied on was Ground 1 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 7 August 2019. An e-mail of 3 December 2019 from the Applicant’s agents, Westgate Estate Agents, Glasgow, to the Tribunal stated that the Applicant “needs to sell”.

On 6 January 2020, 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 January 2020. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

The Case Management Discussion on 4 February 2020 was continued and the Legal Member of the Tribunal issued a Direction to the Applicant to provide confirmation from the co-owner of the Property, Diane Rafter, that the Applicant is entitled to sell the Property and that the Applicant is acting with her consent in regard to the application, documentary evidence to show that the Applicant has the intention to sell, by reference to Ground 1(3) of Schedule 3 to the 2016 Act, and further representations setting out the calculation for the date of 7 August 2019 shown in Part 4 of the Notice to Leave, which appeared not to be the date specified in Section 62(4) of the 2016 Act and reasons as to why the Notice to Leave should be considered valid despite the date entered.

On 2 March 2020, the Applicant's agents, Westgate Estate Agents, Glasgow, provided the Tribunal with a copy of a Letter of Engagement and Terms of Business to sell the Property on behalf of the Applicant and Mrs Diane Rafter, dated 4 February 2020. The letter was signed by both the Applicant and Mrs Rafter. The Applicant's agents also told the Tribunal that they had given the Respondent an additional 4 days in the Notice to Leave as they were under the impression that 84 days was a minimum period and that the period did not need to be exact, provided it was not less than 84 days. They did not want to include weekends at the beginning and the end of the notice period.

The continued Case Management Discussion was held at Glasgow Tribunals Centre, York Street, Glasgow, on the morning of 4 February 2020. The Applicant was represented by Mr Stephen McGlone of Westgate Estate Agents, Glasgow. The Respondent was not present or represented. Mr McGlone asked the Tribunal to issue an Eviction Order without a Hearing.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states 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 provides 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 Act applies.

Ground 1 of Schedule 3 to the 2016 Act states that it is an Eviction Order that the landlord intends to sell the let 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 last put it up for sale, within 3 months of the tenant ceasing to occupy it. Evidence tending to show that intention includes a letter of engagement from a solicitor or estate agent concerning the sale of the let property.

The Tribunal had seen a copy of the Title Sheet showing the Applicant and Mrs Diane Rafter as co-owners and was satisfied from the Letter of Engagement that accompanied the Applicant's e-mail of 2 March 2020, that the Applicant and his co-owner had instructed the estate agents to market the Property and that the Applicant

was entitled to sell the Property. The Tribunal was, therefore, satisfied that the requirements of Ground 1 had been met.

The Tribunal considered the date stated in the Notice to Leave. Section 62(1) (b) of the 2016 Act states that a Notice to Leave should specify the day on which the landlord under the tenancy in question expects to become entitled to make an application for an Eviction Order, which, in terms of Section 62(4) of the Act is the day falling after the day on which the notice period will expire. Section 62(5) of the Act states that for the purpose of Section 62(4), it is to be assumed that the tenant will receive the Notice to Leave 48 hours after it was sent. In the case, the required period of notice was 84 days. The Notice to Leave was sent on 9 May 2019, and was, therefore, deemed to be received on 11 May. Accordingly, the day falling after the day on which the notice period expired was 4 August 2019. The Notice to Leave stated that an application for an Eviction Order would not be made before 7 August 2020. Clearly, had that date been prior to 4 August, the Notice to Leave would have been invalid, but the view of the Tribunal was that it could have been the intention of the Scottish Parliament to make the time periods so prescriptive as to render invalid a Notice to Leave which allowed the tenant, as in the present case, an additional notice period of only a few days and that it would not be in the interests of justice to decide that the Notice to Leave given in the present case was invalid.

Having found that the Requirements of Ground 12 had been met and being satisfied that the Notice to Leave had been validly given, 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**

4. March 2020

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**Date**