



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/22/4115

Re: Property at Flat 4, 38 Tay Street, Perth, PH1 5TR (“the Property”)

Parties:

SGL Investment Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)

Dvorah Mariska McGorski, Flat 4, 38 Tay Street, Perth, PH1 5TR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 18 June 2020.
2. The application was dated 14 November 2022 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave dated 28 June 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by email on 29 June 2022, all in accordance with the provisions of the PRT.
3. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice

provided little more information (but there was lodged with the papers a formal instruction by the Applicant to Delmor Estate Agents to market the Property for sale). The Notice to Leave intimated that an application to the Tribunal would not be made before 24 September 2022.

4. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 31 May 2023 at 14:00. The Applicant was represented by Aimi Lewis, Regional Manager, Belvoir Perth. The Respondent represented herself. The details of the dispute are set out further below.
5. At the said CMD, we also sat as the Tribunal panel. We continued the application to a Hearing, which was subsequently assigned for 30 August 2023. In light of the full circumstances set out below, we discharged the hearing of 30 August 2023 in advance of it calling, and after consideration of further written submissions, have now decided to dismiss the Applicant’s case under Rule 27, and, in terms of Rule 18, to do so without a hearing.

The Dispute

5. Between written submissions and documentation lodged by the Respondent prior to the CMD, and parties’ submission at the CMD, the dispute was clearly identified. The Respondent disputed that the Applicant truly sought to sell, and expressed a belief that the Applicant “will let the property sit empty for 3-6 months (file vacant property notice with council so reduce his expense) then re-let the property for hundreds more than he would have been able to with an existing tenant” (*sic*).
6. The Respondent’s submissions contained the following points in support:
 - a. That she was in correspondence (through solicitors) with the Applicant’s solicitors in Spring 2022 regarding her desire to purchase the Property from the Applicant, but the Applicant’s solicitor stated by email on 29 April 2022 that the Applicant “was not anxious to sell this property and indeed has no particular wish to sell it all”. The Notice to Leave (relying on Ground 1, that the Applicant did say it wished to sell) was then issued two months later on 29 June 2022.
 - b. A Notice to Leave in similar terms was issued to the Respondent’s neighbour at Flat 5 at the same time, and that Tenant left. The Applicant did not then sell Flat 5 and instead marketed Flat 5 for re-letting, re-letting it at an increased rent. The Respondent said the rent for Flat 5 had been £725/m for the previous tenant, but was now £850/m.
 - c. The Applicant has not been a good landlord, with various repairs issues for the Property unresolved, even after an RSEO had been issued regarding some of the issues. (Other repairs issues had been reported but were not yet subject to any application to the Tribunal.)
 - d. The Applicant had raised the rent during a period when no rent increases were allowed, had not properly accounted for either the increased rent paid by the Respondent nor the sums that the Respondent has expended on the Property (to pay for repairs that the Applicant had failed to do).

The Respondent confirmed that she had not yet raised any issues under the Letting Agent regulations but wished the matters regarding the rent increase and repairs to be considered as part of “painting the picture” of the Applicant’s behaviour and “ethics”.

7. The Applicant’s agent confirmed at the CMD that the application was insisted upon and that the Applicant did wish to sell the Property. She explained the Property had been purchased some years previously and, after rising factoring and other costs, the Applicant judged that it was no longer economic to rent out. The Applicant initially did not seek an opportunity to provide further information in response to the Respondent’s submissions, but then acknowledged that it did wish to reply to the principal defence regarding whether the desire to sell was genuine, and the other matters raised.
8. Further to our questions at the CMD, the Applicant’s agent clarified and confirmed a number of points raised by the Respondent’s submissions (and some further points asked by us). We noted the following:
 - a. The Applicant is ultimately owned by Sean Lewis, who is also the ultimate owner of Belvoir Perth, and the ultimate owner of the estate agent said to have been instructed to sell the Property. We noted that Mr Lewis was thus in control of the Applicant, the Applicant’s letting agent, and the Applicant’s putative estate agent. (According to Companies House when last checked by us on 3 September 2023, Mr Lewis remains the sole director of: the Applicant, Perthshire Asset Managers Ltd (which trades as Belvoir Perth), and Delmor Estate Agents Ltd.)
 - b. Aimi Lewis (the Applicant’s agent at the CMD) and Sean Lewis are siblings. Ms Lewis stated that she was an employee of Belvoir Perth but that she was not involved in the Applicant’s property business.
 - c. The tenant of Flat 5 did receive a Notice to Leave on the basis of ground 1. The tenant thereafter left, having issued his own notice to leave. The Applicant’s agent did not have the dates of the two notices available during the CMD.
 - d. Flat 5 was not sold. At the CMD, the Applicant’s agent said that she was not aware of the reason for the Applicant’s apparent change of mind on selling Flat 5 (nor on the apparent change of mind between April and June 2022 regarding not selling the Property (Flat 4) but then issuing the Notice to Leave so as to sell).
 - e. Flat 5 was marketed for re-letting by Belvoir Perth and then re-let by them. It is current rented out through Belvoir Perth for £850/m. During the CMD, the Applicant’s agent could not confirm the amount of the previous rent.
 - f. The Applicant’s agent submitted that the Notices to Leave for Flats 4 and 5 were not issued for any reason connected with wishing to carry out work to the flats, such as the RSEO that the Respondent had obtained. She said that the Notices were issued for the reason as the Applicant regarded both the flats as no longer economic to rent out due to increased costs.
 - g. The Applicant owned around 10 properties as at the time of the CMD.
 - h. The Applicant took title to the Property and Flat 5 in 2018. Prior, they had been owned by Mr Lewis personally for a number of years and he refinanced in 2018, transferring title into the Applicant at the same time.

9. In discussion with parties on further procedure at the CMD, the Applicant sought a Hearing, and the Respondent expressed a desire to avoid the need for witness evidence but did not oppose a Hearing being set. After the discussion on further procedure, and a brief adjournment for us to discuss and consider, we adjourned the application to a Hearing (by Webex videoconference, on a date to be set) and confirmed that a Notice of Direction setting out further procedure would be issued. We took the parties through the proposed Notice of Direction and timetable and neither made any adverse comment or sought any alterations.
10. We issued a Notice of Direction, along with a Note of the Case Management Discussion, both dated 31 May 2023 and issued to the parties by the Tribunal's clerk within the days following. The Notice of Direction was in the following terms:

The Applicant and Respondent are each required to provide:

1. *Any further documentation that they wish to lodge, or any revised copies of documents already lodged. If possible, such documents should be lodged in a numbered bundle ("Inventory of Productions") with pages separately numbered.*
2. *A list of witnesses that they wish to call at the Hearing, with each witness's name, address, email address, telephone number, and a brief summary of the evidence that they shall be providing.*
3. *A list of dates unsuitable (for them and their witnesses) for the setting of any Hearing in the application, which dates should cover the period from 17 July to 30 September 2023.*

The said documentation should be lodged with the Chamber no later than close of business on 17 June 2023.

4. *Witness statements for the Respondent and each parties' witnesses. The said statements should be signed and dated by the witness, and can be provided in the form of a letter or a formal statement. The statements should set out the witness's principal evidence on the matters in dispute.*

The said documentation should be lodged with the Chamber no later than close of business on 5 July 2023.

Reason for Direction

For the administration of date setting of the Hearing, and to assist parties and the Tribunal in their preparation for, and conduct of, the Hearing to be set.

11. The Note of the CMD further highlighted to the parties two matters:
 - a. That in regard to the request for witness statements, parties should note that each witness should provide a witness statement and should also be able to attend the Hearing, and that a witness attending the Hearing without

a statement timeously lodged may not be heard, and a statement not supported by a witness appearing personally at the Hearing may not be considered.

- b. That the Tribunal would require to consider the reasonableness of the application, so the Applicant must seek to satisfy the Tribunal at the Hearing that the ground for eviction is made out and that it was reasonable to evict in the circumstances. Therefore, should the Respondent wish to defend the application both on the basis that the ground for eviction was not made out and that it was not reasonable to evict, then evidence should be led by her on this.

Subsequent procedure

12. 30 August 2023 was identified as a suitable date for a Hearing by Webex and parties were duly informed. The Respondent corresponded with the Tribunal on matters tangential to the Notice of Direction but neither party provided an Inventory of Productions (per paragraph 1 of the Directions) nor a List of Witnesses (per paragraph 2) by the deadline of 17 June 2023. No request for further time was received from either party. Thereafter neither party lodged any witness statements (per paragraph 4) by the deadline of 5 July 2023, and again no request for further time was received from either.
13. In consideration of this failure to comply with the Directions, we instructed the Tribunal's clerk to send an email to parties in the following terms (which was sent to them on 19 July 2023):

The Tribunal notes that no material response has been received from either side in response to the deadlines in the Note of Directions. By this time, parties should have:

- *By 17 June 2023, provided any further documentation that they wish to lodge, or any revised copies of documents already lodged. No documents have been received.*
- *By 17 June 2023, provided a list of witnesses that they wish to call at the Hearing, with each witness's name, address, email address, telephone number, and a brief summary of the evidence that they shall be providing. Though the Respondent may be choosing not to call any other witnesses, it would be useful for her to confirm this and confirm her best contact details. For the Applicant, there should be at least one named witness, and we would require their contact details.*
- *By 5 July 2023, witness statements for the Respondent and each parties' witnesses. As set out in the Directions, the statements should be signed and dated by the witness, and can be provided in the form of a letter or a formal statement. The statements should set out the witness's principal evidence on the matters in dispute.*

As explained in the note of the Case Management Discussion, each witness should provide a witness statement and should also be able to attend the Hearing. A witness attending the Hearing without a statement timeously lodged may not be heard, and a statement not supported by a witness appearing personally at the Hearing may not be considered.

Therefore, at present, neither party has any witnesses confirmed and neither is in a position to provide the Tribunal with evidence in the form that we have set down. This means that there is no purpose in the Tribunal holding a hearing on 30 August, as the Applicant would not be in a position to advance its application as matters stand.

Can the Applicant confirm if the application is still insisted upon and, if so, its position in regard to the absence of any List of Witnesses, witness statements, or further documents lodged.

Can the Respondent further confirm whether she has any other witnesses other than herself, and her position in regard to the absence of any witness statements, or further documents lodged.

Both parties should update the Tribunal by no later than 17:00 on 26 July 2023. After that time, the Tribunal will consider any motions made for late lodging, whether the hearing of 30 August 2023 will be cancelled, and what happens further with the application (including whether it should be treated as abandoned).

No response was received from either party.

14. On 27 July 2023, in consideration that the Hearing as assigned could not take place as intended due to the lack of material compliance by the parties with paragraphs 1, 2 and 4 of the Notice of Direction of 31 May 2023, we took the decision to discharge the Hearing of 30 August 2023. As it was the Applicant's failure to comply which was more significant for the progress of the application, we issued a further Notice of Directions in the following terms:

The Applicant is required to provide:

- 1. In the absence of timeous lodging of documentation, witness statements, and a List of Witnesses in terms of the Notice of Direction of 31 May 2023 by the deadlines therein, any submissions on the following:
 - a. Whether a fresh Hearing should be assigned and, if so, the timetable for lodging that the Applicant proposes for the Tribunal's consideration; and*
 - b. Why the Tribunal should not at this time dismiss the application, in consideration of Rule 28(2)(b) given the Applicant's failure to co-operate with the Tribunal.**
- 2. In the alternative, written confirmation that the application has been withdrawn.*

The said documentation should be lodged with the Chamber no later than close of business on 18 August 2023. Failure to respond to this Notice may itself result in the Tribunal dismissing the application for want of insistence.

Reason for Direction

For good and fair administration of the application in the absence of timeous communication from the Applicant.

15. We understand that these Directions were issued to the parties on or about 31 July 2023, with a covering communication from the Tribunal stating:

The Tribunal notes that no material papers have been lodged in advance of the Hearing. In the circumstances, of its own accord, the Tribunal is cancelling the Hearing of 30 August 2023 as it cannot proceed. Parties and their witnesses do not need to attend on that date and no further date for a Hearing is being set at this time.

The Tribunal is now considering whether a new Hearing should be assigned or the application dismissed. The attached Notice of Direction is being issued on the Applicant for its submissions. The Respondent may make any comments she wishes by the same deadline but she does not require to. The Tribunal will then consider any response and issue further communication, Directions, or a Decision.

16. No response was received from the Applicant by the deadline. The Respondent did respond on 18 August 2023 with some further correspondence that she sought to rely upon, but no witness statements. In the covering email she queried why a hearing with witnesses or witness statements was required (effectively the point she had made at the CMD regarding further procedure).
17. The Applicant's agent (Ms Lewis) then emailed on 21 August 2023 in the following terms:

Dear Sirs,

I am writing to advise that I am seeking an extension to still have the hearing in order that I can take further instructions from my client in the matter. I understand that the hearing date is set for tomorrow and my understanding has been incorrect in that the respondent was to supply further details for the case.

I do not wish to cause any upset to the respondent but do wish the hearing to continue in order that the matter can be ended and closed satisfactorily with the jurisdiction of the Chamber.

Best regards

Aimi Lewis

The Tribunal's clerk responding to confirm that the Hearing of 30 August 2023 was already cancelled, and that the Tribunal members consider matters further. The Respondent corresponded further on 28 August 2023, criticising the Applicant's request for further time.

Reasons for Decision

18. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent. The issues before us were those of whether Ground 1 was made out, and reasonableness. It was on those matters that we set a Hearing as we did not believe that these could be considered fully without witness evidence. In our experience, we thought witness statements would be of assistance and would make the most effective use of the time set for the Hearing.
19. It was clear from us, from the CMD, that there remained much in the Respondent's defence that the Applicant would wish to respond to through such witness evidence (such as the circumstances relating to seeking the tenant of Flat 5's eviction so as to sell (but not then selling), and why the Applicant changed its position on selling the Property between April and June 2022). The reasons for wishing to sell, and reasonableness, would also require to be addressed by the Applicant's witnesses, all so that we could decide whether the ground for eviction was well made out. For completeness, the relevant section of Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that the ground is made out if:
 - (1) *...the landlord intends to sell the let property.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
 - (a) *is entitled to sell the let property,*
 - (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, and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
 - (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.*
20. In the circumstances, without witness evidence, we were not satisfied we consider the application further. To that end we had already issued a Notice of Direction seeking a List of Witnesses and witness statements on 31 May 2023 regulating in part how we sought to take witness evidence. Neither party

complied, but the Applicant's failure is more fundamental. In terms of Rule 27, we may dismiss an application in certain circumstances where a party's compliance and cooperation with the Tribunal is not forthcoming. The terms of the Rule are as follows:

- (1) *The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.*
- (2) *The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to—*
 - (a) *comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or*
 - (b) *co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.*

It is only Rule 27(2) that is relevant here. In considering what it means to "deal with the proceedings justly and fairly", we think it appropriate to consider the "overriding objective" at Rule 2:

- (1) *The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*
- (2) *Dealing with the proceedings justly includes—*
 - (a) *dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*
 - (b) *seeking informality and flexibility in proceedings;*
 - (c) *ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;*
 - (d) *using the special expertise of the First-tier Tribunal effectively; and*
 - (e) *avoiding delay, so far as compatible with the proper consideration of the issues.*

21. The Applicant has clearly failed to comply with the Notices of Direction of 31 May and 27 July 2023, and failed to respond timeously to the email of 19 July 2023. The belated email reply of 21 August 2023 gives no indication as to the reasons for non-compliance, nor the steps to be taken to attempt belated compliance. Further, a continuation is not required in order (as Ms Lewis phrases it) that "the matter can be ended and closed satisfactorily with the jurisdiction of the Chamber" as we made clear in the correspondence of 31 July that a decision may be made without a hearing, and that the decision may include dismissal.
22. The Applicant's email, insofar as it requested a further extension, thus did not engage with the further delay an extension would cause nor the proportionality of allowing it (both relevant per the overriding objective). The sparse terms of the email are particularly disappointing given that the client from whom Ms Lewis has

apparently failed to obtain clear instructions is effectively her brother (who is also her employer). The Applicant's email of 21 August 2023 is thus entirely insufficient in addressing either the Applicant's failure to comply (Rule 27(2)(a)) or the failure to cooperate and the interference this has caused with the Tribunal dealing with matters justly and fairly (Rule 27(2)(b)).

23. We considered whether a further Hearing, or a time for further submissions, was required before considering whether to dismiss. In terms of Rule 18:
- (1) *Subject to paragraph (2), the First-tier Tribunal—*
 - (a) *may make a decision without a hearing if the First-tier Tribunal considers that—*
 - (i) *having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*
 - (ii) *to do so will not be contrary to the interests of the parties; and*
 - (b) *must make a decision without a hearing where the decision relates to—*
 - (i) *correcting; or*
 - (ii) *reviewing on a point of law, a decision made by the First-tier Tribunal.*
 - (2) *Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

We are satisfied that we have provided sufficient time for submissions, that we have considered them, and that the facts before us (that there has been non-compliance with two Notices of Direction without explanation) are not disputed. We are therefore satisfied that we can (and to avoid further delay, should) make the decision without a hearing in terms of Rule 18(1)(a) on whether or not to dismiss the application.

Decision

24. In all the circumstances, we dismiss the application in terms of Rule 27(2). There has been non-compliance by the Applicant as stated, allied with its failure to cooperate with the Tribunal in a way that has already led to a Hearing being discharged. The failure to co-operate currently leaves us with no route to scheduling an effective Hearing with witnesses, and without effective witness evidence we cannot see a way to consider the application justly and fairly.
25. As this decision has been issued without a hearing, we did not have an opportunity to seek submissions on expenses. Should either party wish to make a motion for expenses for any part of the application proceedings, we would invite such a motion to be made within 28 days of the date of this Decision.

Post-script: Compliance with Notices of Direction and referral to relevant authorities

26. It goes without saying that the Respondent's failure to comply has not assisted her position. The application is dismissed despite her non-compliance. Had the Applicant complied, even in part, with the Directions then the Respondent's position could have been imperilled. The time for raising issues on procedure is at the CMD, not after a prolonged failure to comply with them.
27. In regard to the Applicant, we have ruled above on the consequences of non-compliance but we are further conscious that the defence to the application raised significant questions as to whether the Applicant was a fit and proper landlord (if it was issuing Notices to Leave in bad faith, as the Respondent alleges). That, indirectly, is relevant on whether Mr Lewis is a fit and proper person to be involved in a regulated letting agent. We make no findings on whether or not this is the case having not heard the evidence. These matters were, however, raised with us and if there had been adverse findings-in-fact at the Hearing we would have instructed a copy of our Decision with those adverse findings to be sent to the relevant authorities. We do not see any reason why we cannot instruct a copy of this Decision to be sent to the local authority (Perth & Kinross Council) and the Scottish Ministers regarding their interest in the landlord and letting agent registration databases in any case, for them to consider whether they wish to investigate further. We have instructed the Tribunal's clerk to do so.

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.

Joel Conn

3 September 2023

Legal Member/Chair

Date