Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/3712

Re: Property at Flat 4/1, 25 Trefoil Avenue, Glasgow, G41 3PB ("the Property")

Parties:

Ms Anne Duffty, c/o Louise Cameron, Friends Legal, 5th Floor The Centrum Building, Queen Street, Glasgow, G1 3DX ("the Applicant")

Mr Johar Mirza, Ms Sofia Liaquat, Flat 4/1, 25 Trefoil Avenue, Glasgow, G41 3PB; 36 Royal Gardens, Bothwell, Glasgow, G71 8SY("the Respondents")

Decision

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

Background

1. By application received on 18 November 2019 the Applicant seeks an eviction order against the Respondents in terms of the Section 51 of the 2016 Act. A private residential tenancy agreement, Notice to Leave with copy email, Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, Home Report, property schedule and sole selling rights agreement were lodged in support of the application. The eviction ground stated in both the application form and Notice to leave is ground 1 - the landlord intends to sell the let property.

2. A case management discussion ("CMD") was scheduled for 27 April 2020. However, before the application was served on the Respondents, Government restrictions because of COVID 19 were imposed, and the CMD was postponed. The First Respondent had made enquires with the Tribunal and, at his request, a copy of the application and supporting documents were served on him by email. On 24 June 2020, parties were advised by letter or email that the CMD would now take place by telephone conference call on 11 August 2020 at 2pm. Following receipt of this letter, the Second Respondent contacted the Tribunal to advise that she had not received a copy of the application and supporting

papers. She provided an email address for service. A copy of the application and supporting documents were served on her by email on 22 July 2020.

3. The Respondents requested a postponement of the CMD. This was refused by the Tribunal. The application called for a CMD at 2pm on 11 August 2020. Both Respondents participated. The Applicant was represented by Ms Cameron, solicitor.

4. Following the CMD, the Legal Member determined that the application should proceed to a hearing. A Note was issued to the parties which identified the matters in dispute.

5. On 25 August 2020, the Applicant lodged a list of witnesses.

6. On 23 September 2020, all parties were advised that a hearing would take place by telephone conference call on 27 October 2020 at 10am, and that they were required to participate. They were provided with a telephone number and passcode.

7. On 15 October 2020, the Applicant submitted a list of documents**.** This related to documents which had already been lodged with the application. A second list of documents, together with copies of the documents referred to, were lodged on 21 October 2020. On 19 October 2020, the Respondents lodged further submissions and documents. These identified additional issues, not previously raised by them.

8. On 24 October 2020, the Respondents emailed the Tribunal to ask for the hearing to be postponed. The request was opposed. The Tribunal refused the request for a postponement.

9. On 26 October 2020, the Respondents submitted a motion to exclude the Applicant's second list of documents due to their lateness. At midnight on 26 October 2020, the first Respondent submitted a large bundle of documents and legal authorities which extended to 109 pages. Some of the documents had previously been submitted, but some were being lodged for the first time.

10. The application called for a hearing at 10.30am on the 27 October 2020. The hearing started late to allow the Tribunal and parties to consider the papers which had been submitted the previous evening by the First Respondent. The Applicant participated, and was represented by Ms Cameron, solicitor. Both Respondents participated.

The Hearing (27 October 2020)

Preliminary Matters.

11. The Tribunal noted that the Respondents stated, in their request for a postponement of the hearing, that a physical hearing was required. They argued that it would not be possible for the Tribunal to assess credibility and

reliability during a hearing conducted by phone. In addition, they expressed concern that there would be no way to ensure that the Applicant's witnesses did not listen to the evidence being given by a colleague or confer before giving evidence**.** The Tribunal advised parties that the decision had been taken at the CMD that a hearing by telephone conference call was appropriate. It had been taken based on the information provided by parties, which included information from the Applicant that there would be witnesses from the letting agency. The Tribunal confirmed that if an issue arose in relation to the taking of evidence over the phone, the Tribunal could adjourn the hearing to a later date when a physical hearing could take place. The Tribunal also noted that steps could be taken to address the risk of witnesses conferring and that a physical hearing did not necessarily guarantee that witnesses would not discuss their evidence.

12. The second issue raised by the Respondents was the late lodging (on 21 October 2020**)** by the Applicant of an email from Glasgow City Council which appears to acknowledge receipt of the Section 11 Notice. The Respondents argued that they had not had sufficient time to consider this document and investigate its authenticity. The Tribunal noted that the Section 11 Notice had been lodged with the application in November 2019. A copy of an email to Glasgow City Council enclosing the Notice had been submitted at the same time. In their submissions, lodged on 19 October 2020, the Respondents indicated (for the first time) that they did not accept that the Section 11 Notice had been sent to and received by the local authority. It was in response to this statement that the copy email had been submitted by the Applicant. The Tribunal was therefore satisfied that the document should be allowed.

13. The Tribunal noted that the first Respondent had lodged a bundle of documents which extended to 109 pages at midnight on the 26 October 2020. Some of the documents had been lodged before and were now simply put into a paginated bundle. However, some of the documents were new. Ms Cameron advised the Tribunal that she did not object to the bundle being allowed, although had reservations as to the relevance of some of them. The Tribunal confirmed that documents could be allowed.

14. The Tribunal asked the first Respondent to clarify why a Home report which related to an unrelated property had been submitted. He advised that it was for comparison purposes only in relation to the report lodged by the Applicant.

15. The Tribunal noted that the Respondents had not been provided with a copy of the Applicant's land certificate. This had been obtained by the Tribunal, from Registers of Scotland, in accordance with the Tribunal's usual procedures and under Rule 20 of the Procedure Rules, at the application stage. The Respondents confirmed they did not have copies of the title deed. The Tribunal adjourned the hearing to allow a copy of the land certificate obtained in November 2019, and a further copy obtained on 27 October 2020, to be circulated to the parties. When the hearing resumed, the First Respondent advised the Tribunal that he had a submission to make in relation to the land certificate and Rule 109 of the Procedure Rules. He referred the Tribunal to the rule which requires an Applicant to submit evidence in support of the application. Ground 1 of Schedule 3 requires a landlord to establish that he is

entitled to sell and that he intends to sell. However, the land certificate had not been lodged by the Applicant and no other evidence of entitlement to sell had been provided. The Tribunal referred the Respondent to Rules 5 and 8 and to their connection to Rule 109 and advised that the argument in relation to Rule 109 should be made at the conclusion of the hearing.

16. The First Respondent raised one further preliminary matter. He referred the Tribunal to a previous decision of a Legal Member of the Tribunal under Chamber reference EV/20/18/1657. This application had been dismissed because of defects in the Notice to leave. One of the defects was the absence of a date on which the tenant was due to leave the property. The First Respondent stated that there should be consistency by the Tribunal in relation to such matters and pointed out that there is not such date in the notice lodged by the Applicant. The Tribunal noted that it was not apparent from the decision in the other case, where the defect in the notice had occurred, and that it was not possible to compare the two cases in the absence of this information. The Respondents were referred to the terms of Section 62 and the 2016 Act which defines a Notice to Leave and advised that they could make submissions on this matter at the conclusion of the hearing.

The Applicant's evidence

17. Ms Dufty (AD) stated that she bought the property in 2004 to live in and lived there for several years. She has been renting it out for about 7 years. She is the current and sole owner. She does not rent out any other properties. The property is managed by the Property Bureau ("PB"). She identified the tenancy agreement submitted with the application as the agreement signed by the Respondents in connection with the property **(**Item 1 on the Applicant's list of documents). The tenancy started on 11 December 2017. She identified the Notice to Leave lodged with the application as the Notice given to the Respondents, by PB, on her instructions (Item 3 on the Applicant's list). PB had previously contacted Mr Mirza (JM) to advise him that she intended to sell. He said he would look for another property but did not move out. She decided to start eviction proceedings and asked PB to issue the Notice to Leave to the Respondents. She stated that she wants to sell the property. She previously put it on the market, with JM in occupation, but was unsuccessful. There were no offers. She thinks that the tenant being there was impeding the sale and that she might be more successful if it was unoccupied. She recently attempted to get an updated Home Report but could not get access to the property. PB contacted JM but he said he would only allow access if the surveyor was given certain information. She did not agree to this and felt that the surveyor should be left to make their own assessment of the property.

18. AD identified the Home Report which was lodged with the application and is dated 22 February 2018. (Item 10 on the Applicant's list**).** She stated that prior to the property being marketed, she obtained this report and PB prepared a schedule. She identified the schedule which had been lodged with the application as being the one prepared by PB (Item 9 on the Applicant's list).

She signed a sole selling rights agreement with PB. This was updated in November 2019. She identified the agreement lodged with the application as the one she had signed with PB in November 2019. (Item 7 on the Applicant's list). She stated that there were no offers for the property. The Respondents did not offer to purchase the property. She concluded that the pictures in the schedule were not good enough because the property was not in the best condition for sale. She is unable to say what price she hopes to get for the property. That will depend on the valuation.

19. AD identified the Section 11 Notice lodged with the application. She stated that she filled it in and emailed it to the Council **(**Item 5 on the Applicant's list) She identified the email to the Council dated 18 November 2019 (item 6 on the Applicants list) and an email from the Council dated 20 November 2019, (item 11 on the Applicant's list), which acknowledged receipt of the notice. She stated that it is entirely her intention to sell the property - 100%. She stated that things in her life have changed and the rent does not cover the outgoings for the property. She no longer wants to subsidise it and has decided to sell.

20. In response to questions from JM, AD stated that she has never met or corresponded directly with him and has not been inside the house since the tenancy started. PB carry out routine inspections as per the tenancy agreement. She stated that JM has stopped paying rent. She denied that she had previously tried to evict the Respondents because of rent arrears and stated that she has only sought eviction due to her intention to sell. She confirmed that she had attempted to increase the rent. The increased figure was not paid. She is not sure if PB followed the correct procedure to increase the rent. She confirmed that she authorised the issuing of the Notice to leave. She was referred to an email dated from PB to JM dated 22 August 2018, This states "Please be advised that your landlord confirmed that she will withdraw the Notice to Leave providing you bring the rental up to date. It does remain Miss Dufty's intention to sell the flat in the short term and the next time notice is issued it will be pursued through the First-tier Tribunal should you fail to vacate on the lease end date". "The landlord has also requested that we review the rent level. The proposed new rent is £775 pcm". It was put to her that a genuine seller would not be withdrawing the notice and negotiating to increase the rent. In response, she pointed out that the email says that she still intends to sell. She knew the eviction process would take time. She said that she had tried to get JM to leave and could not deal with the stress of the situation at that point. She intended to sell throughout. She confirmed that a Notice to leave issued in April 2018 was withdrawn. She confirmed that an email dated 10 December 2018, which states that the rent was to be increased to £775 per month, was sent on her behalf. She confirmed that she instructed service of a Notice to Leave on 8 January 2019 and that this was after the Respondents had refused to pay the increased rent. She denied saying that the Respondents did not live in a tidy way. She stated that when you sell a property, you dress the property and want it to look its best. JM would not agree to a rug being put down. Her interests and JM's interests in relation to the property were not the same. She was not implying that renters are messy. She was asked about a previous eviction action and said she had stopped it and started a new application to make sure that she was complying with regulations. JM had made complaints and she wanted to

ensure the application was compliant. She confirmed that her name and her agents address are on the Notice to leave. The signature is the agents, not hers. The home report from February 2018 is the only home report she has obtained. She did not request access to the property between February 2018 and July 2019. In response to questions regarding a routine inspection on 7 February 2018, she confirmed that she was aware of a complaint about the water pressure, but 2 plumbers had found no fault. She cannot remember when she became aware of the complaint. A water pressure fault has recently been identified but she believes it is a new problem. In relation to the Section 11 notice, she cannot remember where she got the Council email address but might have phoned up or asked the Tribunal. She confirmed that the form which was submitted with the application is the document sent with the email. The email she got in response is the evidence that it was sent, and the Tribunal has her testimony. She confirmed that the address on the form is her solicitors' address. She can't remember the exact dates that the property was on the market. It went on to the market shortly after the date of the home report. It became clear early on that there was a problem. There were no offers. JM expressed interest but did not make an offer. Ms Liaquat (SL) made a recent approach to PB. AD told the agent that she would be delighted to sell it to her, once it was on the market. If SL genuinely wants to buy, she is free to put in an offer. It is not unreasonable of her to want to market the flat. The property will be marketed once JM has moved out, to get the best offer.

21. In response to questions from SL, AD denied that the attempt by her to increase the rent suggested a long term plan for renting the property. She said that the increased rent would have lasted until the tenancy ended but she always intended to sell. She confirmed that the correct legal process for increasing the rent had not been followed. She confirmed that the Notice to Leave was issued a short time later. She stated that she had asked JM to move out. He asked for more time and asked if he could stop paying rent to build up a deposit. She agreed. He didn't move out and she had to start the eviction process. It was put to her that the reason for the Notice to Leave was the refusal to pay the increased rent. She denied this and said that she had previously tried to sell. The decision to sell was for reasons within her own life and nothing to do with the tenants. It was put to her that she had previously said that both Respondents had expressed an interest in the property. She said that this is not what she meant. It was only JM who had previously expressed an interest. SL had only recently expressed an interest. It was put to her that she had previously marketed the property with JM living there. Why had she changed her position? She replied that no one had put in an offer and thinks she needs a different tack. She believes it will be easier to sell when its vacant. It was put to her that if she really wanted to sell, she would have responded differently when SL expressed an interest, particularly in the current circumstances. She denied this saying that SL can put in an offer when it is on the market.

22. In response to questions from the Tribunal AD stated that there had been a number of viewings when the property was on the market before. She confirmed that there are currently £5000 of rent arrears and the rent is not being paid. She was aware that SL had moved out of the property. She is not sure when she became aware. She is aware of the email from SL dated March 2019.

She discussed the matter with PB. They recommended that she did not agree to a new tenancy in the sole name of JM, as it might look as though she did not intend to sell. There was no new tenancy agreement signed.

Andrew Monachan's evidence

23. Mr Monachan (AM) stated that he is a director and part owner of PB and has worked there for 11 years. He started the sales side and currently heads up the sales team. He stated that he became aware of the property when AD was thinking about selling. He visited the property to assess its value and, following discussions with AD, instructed the home report. He took photographs and prepared the schedule. He stated that AD signed a sole selling rights agreement ("SSRA") with PB. When he went to the property, he met JM who was made aware of the property going on the market. In addition to the SSRA there were emails between PB and AD which confirmed that they were instructed to sell. Part of the process is to instruct the home report. He stated that the property was put on the market in 2018 for several weeks. There were 7 viewings, some of which were carried out by him. His colleagues gave feedback to AD on the viewings. He was referred to an email dated 27 February 2018. This states, "Hi there, just to let you know that I'm doing the first viewing for us on Friday afternoon at 3pm and have mentioned to the tenant about the rug etc. so can hopefully update the pictures then". He said that he recalled the email. AD felt the property didn't look good in the photos, she thought it was barren. She had a rug which she wanted to put in the lounge. He said he would collect it and take it to the property. He recalls the feedback from the viewers being fairly typical. Some said it was too expensive. AD felt that it would best to get the property re-decorated and put it back on the market after that. He stated that he is aware that JM wanted the surveyor doing the new home report to be told about the water pressure. However, he believes the Surveyor should do his own autonomous report. He confirmed that he met JM on a couple of occasions. He stated that he had been contacted by SL recently. They spoke on the phone. She expressed an interest in buying the property. He said he would speak to AD. AD told him that she wanted to wait until the property was vacant, re-decorate and market the property. He told SL that he would contact her at that stage. He confirmed that there had been no previous offers for the property. He stated that it is easier to sell a property when it is empty and has been re-decorated.

24. In response to questions from JM, AM stated that PB manages about 1500 properties but that he deals with sales. He said the property was put on the market shortly after the home report was received. He said that Home Reports have a validity period of three months, for mortgage purposes, so it will have been on the market within 2 weeks. He stated that the marketing of the property involved the preparation of the brochure with photographs. He did that. The property was advertised on Right Move and Zoopla, for 4 to 6 weeks. In addition, the property details were at PB's offices and there was a sign placed at the property. He was referred to an email from JM to Kaley 10 April 2018. This states, "It is proving extremely difficult to find a replacement property. I note that this property is no longer advertised on online portals." and confirmed that the property was taken off the market about that time. It was put to him that

it was too soon to take it off the market. He replied saying that he has been in house sales for 32 years and the best response is usually the first 2 to 3 weeks. If you get to week 3 or 4, there is usually a reason. There were 7 viewings and not enough of a positive response. It was decided to take it off the market and deal with remedial issues such as painting and wear and tear. JM asked if viewers were told that the current tenant was willing to pay three months rent in advance. In response AM said that there is a limited market for properties with a tenant in occupation. It is better to be in a position to sell to anyone, not just people who intend to rent it out. AM confirmed that a property does not need to be placed on the open market to be sold, a private arrangement can be made between the buyer and seller. When asked if there was a duty to disclose possible repair issues to the surveyor, AM said that it was for the surveyor to assess the condition of the property. He confirmed that JM had been cooperative about providing access at the time of the home report and marketing of the property and that he had not been asked to provide access for a home report from February 2018 until July 2019. When asked whether it is possible for a property to be sold with a sitting tenant, he replied that 99% of properties are sold with vacant possession, even if the buyer intends to let it out. Having a tenant in occupation can be detrimental to the sale process.

25. In response to questions from SL about her expression of interest in the property, AM advised that it didn't matter who was expressing an interest, AD would have said no at that stage. No price had been identified and work was to be carried out. It was put to him that the current pandemic must be making it difficult to sell properties. He denied this and said that there is currently a high demand for properties and the market is good for sellers. He also stated that the property is more likely to appeal to second or subsequent buyers rather than first time buyers. He confirmed that the property was only previously marketed for 5 or 6 weeks, that there were 7 viewers and the average number before a property sells is 8.

26. In response to a question from the Tribunal regarding the word "we" in relation to the decision to take the property off the market, AM said he and his colleagues advised AD to take it off. He also confirmed that he didn't specifically advise her that it should be marketed once it was unoccupied, cleaned and painted, but this was assumed from the discussions which took place.

The Hearing (4 December 2020)

Preliminary Matters

27. In advance of the second day of the hearing both parties lodged submissions in relation to the legal aspects of the case, having been directed to do so by the Tribunal. As part of the Respondents submission, they asked the Tribunal to exclude both sets of title deeds which had been obtained by the Tribunal and circulated to the parties on the morning of the previous hearing on 27 October 2020. The reason provided was that these had been obtained by the Tribunal, and not the Applicant, when it was for the Applicant to prove her case. Ms Cameron objected to this but said that if it was to be granted, the Applicant asked the Tribunal to allow the late lodging of the title deeds by the Applicant

in terms of Rule 22 of the Procedure Rules. The Tribunal adjourned to consider the request. The Tribunal determined that the title deeds obtained by the Tribunal from Registers of Scotland should be excluded because they had not been lodged by the Applicant. Thereafter, the Tribunal allowed the Applicant to submit a copy of the Applicant's title to the property. The Tribunal determined that the Applicant had a reasonable excuse for the late lodging of the document. The request by the Respondent to exclude the deeds had only been submitted to the Tribunal on 3 December 2020, the Applicant had reason to believe it was not necessary to lodge the deeds between 27 October 2020 and 4 December 2020 because the Tribunal had obtained these from the public register and circulated them to the parties on 27 October 2020, and it had not been clear from the Respondents submissions that the Respondent was specifically challenging the ownership of the property. The Tribunal also refused the Respondents request that the Tribunal recuse itself from the case and allow a new hearing before a new Tribunal on the basis that there was no basis for this and no conflict of interest. The copy title sheet lodged by the Applicant was identical to those circulated to the parties on 27 October 2020, except for the search date.

Evidence of Carol Ann Moss (CAM)

28. CAM stated that she is an accounts assistant with PB. She works in the accounts department and deals with rental income, invoicing and contractors. She also issues notices. She has worked for PB for 11 years. She is aware of the property and has dealt with tenancy matters in relation to it. She issued the notice to leave to the tenants on behalf of the landlord. A copy of the home report and a checkout letter were sent with the notice. Her maiden name was Grant. She sent the notice by email on 10 July 2019 from the email address shown on the copy of the email Enquiries@propertybureau.co.uk ("the enquiries email address"). She sent it from this address because it is the one on the tenancy agreement.

29. In response to questions from JM, CAM confirmed that the Applicants address in part 2 of the Notice is PB's address. Her signature is on part 4 of the notice, in her maiden name. She sent the notice from the enquiries email address because they were told by PB directors that they had to do that because it was in the lease. Notices should tie in with the lease. They have now amended the standard lease. She was referred to a document lodged by the Respondent being a list of emails and confirmed that she had exchanged a lot of emails with JM and that he had also been sent emails from other staff members, all from personal email addresses and none from the enquiries email address. She confirmed that a previous notice to leave had been sent to JM from a personal email address and not the enquiries email address. She was referred to an email which related to a proposed rent increase and confirmed that AD had wanted to increase the rent. She was referred to an email to SL which refers to the communication clause the tenancy agreement. She confirmed that in the email she was referring to the clause in the lease which is headed "Communication" and specifies the enquiries email address. She confirmed that all other emails on the Respondent's list came from other email addresses, not

the one specified in the tenancy agreement.

30. In response to questions from SL, CAM said that the only time she used the enquires email address was for the Notice to Leave but she couldn't speak for other colleagues.

Evidence of Jennifer Beavis (JB)

31. JB said that she is a sales and letting negotiator with PB. She deals with sales including arranging viewings, marketing and getting tenancy references. She is aware of the property as PB has managed it for many years and, in a previous capacity, she dealt with repairs issues. More recently she has been involved in relation to access. On being referred to item 11 on the Applicants list of productions she confirmed that it is a copy an email exchange between her and JM. AD was looking to sell and needed a home report. AD had contacted her by phone regarding same. As stated in the email, she told JM that he had three options – to provide a number for the surveyor to contact him direct, to provide suitable dates for the surveyor or to refuse access. His response was quite long winded, but he insisted that the surveyor be made aware of a water pressure issue at the property. He wanted an "assurance". When notified about this, AD refused to agree to the condition saying that it was nothing to do with him. She advised AD of his response and had no further involvement. She confirmed that she had witnessed the tenancy agreement.

32. In response to questions from JM she confirmed that they have never spoken to each other. When asked if it was her position that he had withheld access for the home report she stated that they had not agreed to access on his terms. The email exchange is an accurate statement of what he said. She reported back and left the matter in AD's hands. It was AD's position that JM's issues were nothing to do with the surveyor. When asked if defects in a property should be reported to a surveyor, she said that she would report material defects, but water pressure can be personal opinion. When asked if she was aware of current issues regarding the water she said no, as she doesn't currently deal with repairs. She confirmed that she did not contact JM after the emails to discuss access, she left it in the hands of AD who did not ask her to do anything else. When asked again about disclosure to the surveyor she said that she doesn't deal with instructing the surveyors, she had just been expressing her personal opinion. The Tribunal had asked for a new report. She asked if the existing one could be refreshed but the surveyor had said that a new one was needed. When asked about routine house inspections she said that the purpose of inspections is to check the condition and see if there are any concerns which are then passed on to the landlord.

33. In response to questions from SL in relation to the three options in the email JB said that any tenant has the right to deny access.

The Second Respondents evidence

34. SL stated that she is a qualified solicitor. When asked about AD calling her disingenuous in the context of the purchase of the flat, she said that she

disagreed. She is an officer of the court. When she contacted AM, he said that AD wanted this matter settled before marketing the property. She wasn't asked what she would offer for the property. She has never been contacted by anyone regarding the sale of the property. She gets emails about the property, but never about the sale. She has no knowledge of the property being advertised. She moved out of the property in March 2018 but visited the property on several occasions after that and was not aware of it being marketed. She did not see a for sale sign. She would have noticed because her family are interested in buying in that area. She is aware of a recently introduced first time buyer incentive scheme. This led to her being interested in purchasing the property for herself. Having qualified, and had a salary increase, she can now afford to buy. She thought it unusual that AD was not interested in her approach. It would have been a godsend if she wanted to sell. She was not even asked what she was prepared to offer. She couldn't have bought it before, but her position has changed. She doesn't think that AD is a genuine seller. She was not contacted by JB about access although she is on the lease. Prior to contacting AM about buying the property she visited it to see if it was OK. The property has always been well kept – clean and tidy. JM spends a lot of time in the property and is very focussed on cleaning. He goes above and beyond. She is aware that the notice to leave was addressed to both of them. She has never spoken to AD. All communication was with the letting agent. On being referred to an email dated 3 April 2018 from Kaley Higgins (KH) she confirmed she had received it. It was attached to a notice to leave. She stated that the lease refers to the enquiries email address. She confirmed that there have been numerous emails from PB from different email addresses. She confirmed that an email dated 1 November 2018, which was a notice to increase rent was from a different email address. It states that all notices were to be sent by email, as per the tenancy, but it was sent from a personal email address. She never received anything from the enquiries email address. She relied on the fact everything came from personal email addresses. She responded to the email to challenge the increased rent because the statutory procedure had not been followed. After they rejected the rent increase, they got a notice to leave. Suddenly, the landlord wants to sell. She confirmed that Louise Cameron withdrew a previous application. She recalls being copied into many emails about the water pressure issue but not all of them. She was aware that the gas safety check was 9 months late and the electrical safety check was 18 months late. She was aware of JM's complaints and thought it was retaliation against the complaints. She thinks that that AD did not want to deal with the complaints. She referred to emails between herself and JM in relation to the notice to leave. She had emailed JM when she opened an email which contained the Notice to Leave on 18 July 2019, to see if he was aware. She was concerned. She came across it by chance. It was her position that she did not receive it until she opened it. It may have been sent on 10 July, but not received until 18 July.

35. In response to questions from Ms Cameron (LC) SL confirmed that she was not a party to the previous Tribunal proceedings. She confirmed that the email of 10 July 2019 was in her inbox on that date but not opened until later. The email was sent to the email address in the tenancy agreement. She imagines that the notice period dates in the notice to leave are correct or the application would have been rejected. When asked if she would be interested in buying the

property with JM as a sitting tenant she said not necessarily, but no reason why not. She has no issue with him being there. She is generally ok with JM or another tenant being there now, but maybe not later. She would happily buy with or without a tenant. She accepted that AD was under no obligation to sell to her. She said she would make an offer based on an out-of-date home report but would want to get that in place. When she initiated discussions, she didn't get a response. AD would not engage. She confirmed that she has only recently been interested in purchasing the property. She only made enquires once on 12 October 2020, which was a few weeks before the hearing. She was referred to item 2 on the Applicant's list, being an email from her to KH dated 20 March 2019. This states that she no longer stays at the property. She confirmed that this was the first time she notified PB that she was no longer staying there. It was put to her that this email was not enough to terminate her tenancy. She replied that she is not a tenant and there may be further proceedings on that issue. She advised that rent is being withheld. She is still liable. In the past she paid rent. The rent was paid from her account from the start. It was paid equally by her and JM. When she moved home, she thought for a while she might move back. The rent continued to come from her account, and she contributed. Latterly, JM paid the whole rent until he started to withhold it.

36. In response to further questions from JM she stated that AM would be able to advise AD on price, without a home report. She said that JM was withholding rent because of repairs issues and that he had raised an action about this. She said that she relied on emails from PB coming from personal email addresses. She recalled discussing how bizarre it was that no one followed up and that it came from that email address. She said that she was still on the lease.

37. In response to questions from the Tribunal she said that she didn't know if she was entitled to the first time buyer incentive if there is a sitting tenant. She also stated that it is unusual for Muslim females to live on their own. She is looking to buy as she expects to be getting married soon and would then live in the property.

First Respondent's evidence

38. JM said has lived at the property since November 2017 and currently lives there alone. SL doesn't live there. He referred to the lease. He paid 3 months rent upfront at the beginning. He has a disability and needs a lift, so the property suited. The deposit was 2 months rent. There have been issues with the hot water. It would go cold suddenly, and the pressure would drop. He has complained about this for a long time and is taking legal action. This started about 5 or 6 months after he moved in. Gas and electrical checks were late. He sent many emails, but they were dismissed. A plumber came to the property and said, "Are you not moving out soon anyway". They just wouldn't do repairs. They saw him as a nuisance. He had always intended to live there long term. It was hard to find suitable property. He was called a troublemaker because he wanted them to comply with regulations. The home report was obtained after the water pressure issue started. He was told by the plumber that they were not fixing it because it was too expensive. After the recent hearing on 27 October 2020 there has been a flurry of activity and the boiler is now fixed. The timing

in interesting. The water pressure issue was not disclosed to the surveyor. His family own properties and these things must be disclosed. He was told it was nothing to do with him. He was concerned because it was not honest. AM is supposed to be a professional. The landlord and agents are abusing the (eviction) ground for retaliatory purposes. He did not withhold access for the home report. He has always provided access. The landlord and agent were withholding information from the surveyor. The gas safety check was 9 months late and the electrical check 18 months late. The notice to leave was served after the refusal to agree to the increased rent. The timing was curious. A previous notice to leave was withdrawn with no explanation. He is a very tidy person, and the property is in good condition. In relation to the alleged marketing of the property, no viewings were done in his presence, so he doesn't know if it was marketed. There was no sign up. He saw no trace of marketing. He works from home and did not see any viewers. It seemed a secretive affair. Also, the flats in the area are generally on the market for months. He has not been contacted again about a home report. The notice to leave was served after they tried to raise the rent without the statutory notice. They use the notice to leave as a negotiating tool. He found out about the most recent notice to leave when SL emailed him. He relied on emails from PB coming from personal email addresses. He had defended an eviction action and LC attended and argued that the personal email address was correct. When he was told about the email by SL, he had to look for it. The system only recognises trusted senders. It was in junk. The first time he knew anything about it was 18 July 2020. He does not accept that AD is a genuine seller. This is all because of the repairs matters to the extent that he had to go to the Health and Safety Executive, the withdrawal of the notice to leave, the attempt to raise the rent and the secretive campaign regarding the alleged sale. He referred to an email from KH dated 28 March 2019 to an electrician. It says, "Be careful what you say to this tenant as he is trouble". He thinks he was copied into this email by mistake. It was dishonest to characterise him in this way just because he had made complaints. He does not think he received the notice to leave within the right timeframe because he relied on personal email addresses with good reason.

39. In response to questions from LC he said that he did not receive the notice to leave until 18 July 2020. The email would have flagged as a security risk. He did not get an alert about it. He confirmed that the enquiries email address is in the tenancy agreement. He cannot say when the email was sent. It was not in his system until 18 July. He did have conversation with AM at the property in February 2018, they exchanged pleasantries. AM took pictures but he did not know what they were for. He does not accept that the property was on the market. He did not see any viewers. He does not know if it was marketed. He confirmed that all the notices to leave which have been served have been on the basis that the landlord intended to sell. Then they were withdrawn. On being referred to item 11 on the Applicants productions, an email chain regarding access, he stated that his email makes his position clear. He was not blocking the home report he just wanted her to be honest.

40. In response to questions from the Tribunal about his email of 10 April 2018 which stated he noted the property is no longer advertised for sale on online

portals, JM stated that in April 2018 he had looked to see if the property was advertised. It wasn't. He assumed that it had been previously advertised. However, he was not aware of any marketing of the property. He looked it up and it wasn't there. The Tribunal asked whether he had challenged the email addresses used for a previous notice to leave at a CMD in connection with a previous application for an eviction order. He said that he could not remember, it was too long ago.

Findings in Fact

41. The Applicant is the owner and landlord of the property.

42. The Respondents are the tenants of the property in terms of a private residential tenancy agreement dated 11 December 2017.

43. On 10 July 2019, the Applicant's agent sent a Notice to Leave to the Respondents by email. The email was sent from the email address specified in the tenancy agreement and to the email addresses for the Respondents specified in the tenancy agreement.

44. On 18 November 2019, the Applicant sent a Section 11 Notice in relation to the property to the Local Authority by email. This was acknowledged by the Local Authority on 20 November 2019.

45. The Applicant marketed the property for sale for four and six weeks between 22 February and April 2018. There were seven viewers. No offers to purchase were received. The Applicant instructed the agent to take the property off the market.

46. The Applicant intends to sell the property.

47. The First Respondent remains in occupation of the property. The Second Respondent moved out of the property in March 2018 and no longer resides there.

Reasons for Decision

48. The Tribunal noted that the following facts in relation to the application are agreed –

(i) The Applicant and Respondents entered into a private residential tenancy agreement in relation to the property on 11 December 2017.

(ii) Item 1 on the Applicant's list of documents is a copy of that agreement.

(iii) On 20 March 2019, the Second Respondent sent an email to Property Bureau stating that she no longer resided at the property and asking to be removed from the lease. Item 2 on the Applicant's list of documents is a copy of that email.

(iv) Property Bureau sent an email to the Respondents dated 10 July 2019. The email was sent from and to the addresses in the tenancy agreement. A Notice to leave dated 10 July 2019 and a copy of a home report were attached to the email. Items 3 and 4 on the Applicant's list of documents are copies of the Notice and email.

(v) The First Respondent continues to reside at the property. The Second Respondent does not reside at the property.

(vi) On or about 12 October 2020, the Second Respondent contacted Andrew Monachan and indicated that she was interested in purchasing the property. Andrew Monachan spoke to the Applicant who stated that the Second Respondent could make an offer once the property was on the open market.

49. The parties led evidence and made submissions about a number of matters which the Tribunal concluded were not relevant to the application.

(i) The Respondents gave evidence and made submissions regarding an alleged failure by the Applicant to attend to repairs and delays in gas and electrical inspections taking place. The Tribunal is satisfied that these matters are not relevant to the application. It is suggested that these failures demonstrate that the Applicant is untruthful. However, the Respondents have not established why this connection should be made. The Applicant may have been dilatory in relation to her obligations as landlord, and this is certainly unsatisfactory. However, that does not mean that she is or was untruthful. Furthermore, the Tribunal noted that the main repair complaint, the water pressure, appears to have been disputed by the Applicant.

(ii) The Applicant gave evidence that there are substantial rent arrears, but that these were not the reason for the decision to sell the property. The Respondents stated that rent is being withheld due to the failure to carry out repairs. The Tribunal is satisfied that the arrears of rent, and the reason for non-payment, are not relevant to the application before the Tribunal.

(iii) There was evidence presented to the Tribunal that the Second Respondent approached Property Bureau and expressed an interest in purchasing the property. The Second Respondent gave evidence and made submissions, that her interest was genuine. She also stated that she was not regarded as a genuine purchaser by the Applicant. The Tribunal notes that the only evidence about the Second Respondent's motivation for the enquiry came from the Respondents themselves. The Applicant and her witnesses only stated that the Applicant was not prepared to entertain the enquiry until the property was on the market. In any event, as the Second Respondent states in her submissions, it is not relevant whether she was genuinely interested

in purchasing the property. It is the Applicant's intentions which are at issue. However, the Tribunal is entitled to take into account the Applicant's response to the enquiry in assessing those intentions.

(iv) The Respondents gave evidence and made submissions about the Applicant's refusal to agree to the First Respondent's condition for allowing access to the property for an updated home report. The condition was that the surveyor be notified about the water pressure complaint. It is also claimed in the submissions that the Applicant "dishonestly withheld this information from the surveyor" who provided the previous home report, although there was no evidence about this during the hearing. The Respondents claim that the refusal or failure to provide this information shows bad faith and dishonesty on the part of the Applicant and Mr Monachan. They refer to the evidence of Jennifer Beavis who had confirmed that "such matters should be brought to the surveyors attention as a matter of principle". The Tribunal notes that this is not what Ms Beavis said. Both the Applicant and Andrew Monachan (who appears to have considerable experience in property sales) said that it was for the Surveyor to make his own assessment of the property. Jennifer Beavis said that she thought that information should be provided, if it was about a material defect, but that water pressure can be "personal opinion". She also conceded that she does not deal with instructing home reports. In any event, the Tribunal is satisfied that this is not a relevant consideration. The terms on which the surveyor was to be instructed was a matter between the Applicant, her agents, and the surveyor. The First Respondent, as tenant, was not entitled to impose such a condition on access being provided. Furthermore, the Tribunal is not persuaded that the refusal demonstrates either bad faith or dishonesty on the part of the Applicant, only that she was not prepared to be dictated to by the Respondent on a matter which did not concern him. The Tribunal is satisfied that this is not relevant to the application.

Section 11 Notice

50. Section 56 of the 2016 Act states that a landlord may not make an application to the Tribunal for an eviction order unless the landlord has sent a Notice in terms of section 11(3) of the Homelessness etc (Scotland) Act 2003, to the Local Authority in whose area the let property is located. The Applicant lodged a section 11 Notice with the application. A copy of an email to GCSSection11Notification@sw.gov.uk dated 18 November 2019 was also produced. In response to a challenge from the Respondents, the Applicant lodged a copy of an email from that address, dated 20 November 2019, which acknowledges receipt of the Notice. During the hearing, the Applicant gave evidence regarding the Section 11 Notice. She stated that she completed the form and emailed it to the Local Authority. She identified the form which had been lodged and confirmed that it was the document sent by her to the Council.

51. Although the Respondents challenged the Applicant during cross examination on the Notice and whether it had actually been sent to the Local Authority, they

did not lead any evidence on the issue and do not mention it in their written and oral submissions. They do challenge the validity of the Notice on the grounds that it does not have the Applicant's own address in the section of the form which relates to the landlord. The address provided is Ms Cameron's business address. The Tribunal notes that the relevant section of the form states, "Name and address of landlord who has raised proceedings" and has a space for these to be inserted. This is followed by a section for the name and address of the legal representative. The Respondents claim that the absence of the Applicant's own home address renders the notice invalid, since the form has a separate space for the representative's address. No authority for this argument is provided.

52. The Tribunal is not persuaded by the Respondent's argument. The Section 11 form does not use the word "home" before "address". It therefore appears that any relevant contract address can be provided. It is not uncommon for landlords to be designed as c/o their solicitor or letting agent, in tenancy agreements and tenancy related notices. The purpose of the request for an address is presumably so that the Local Authority can contact the landlord, if required. Not all landlords will have a legal representative and this section would not be completed if that was the case.

53. Even if the form is defective, by reason of the wrong address, this does not mean the form is invalid. The format of the Section 11 Notice is prescribed by The Notices to Local Authorities (Scotland) Regulations 2008, as amended. However, Section 21 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act") states "Where a form is prescribed in or under an Act of the Scottish Parliament, a form that differs from the prescribed form is not invalid unless the difference materially affects the effect of the form or is misleading". The Tribunal is satisfied that the form which has been used is otherwise as prescribed by the regulations. The effect of the form is not materially affected by the use of the solicitor's address and it is not misleading, since the Applicant uses the abbreviation "c/o" and then names her solicitor before the address.

54. The Tribunal is satisfied that the Applicant has served a valid section 11 Notice on the relevant Local Authority, prior to lodging the application for an eviction order and has therefore complied with Section 56 of the 2016 Act.

Notice to Leave.

55. Section 52 of the 2016 Act requires an application for an eviction order to be accompanied by a copy of the Notice to leave which has been given to the tenant. Section 62 of the 2016 Act defines a Notice to leave. It states that the Notice must be in writing, must specify the day on which the landlord expects to become entitled to make an application to the Tribunal and must state the eviction ground or grounds. It must also fulfil any other requirements prescribed in regulations. The format of a Notice to leave is prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The 2016 Act does not prescribe how a notice is to be given. However, Section 62(5) states – "For the purposes of subsection (4), it is to be assumed

that the tenant will receive the notice to leave 48 hours after it is sent". Subsection (4) specifies the date which is to be inserted in Part 4 of the Notice, being the day after the date on which the relevant notice period expires. Section 26 of the 2010 Act deals with service of documents. It states that document can be served, given, or sent by "electronic communications" if "(3) …before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose."

56. The Applicant lodged a Notice to Leave with the application. It is in the format prescribed by the 2017 Regulations. The Applicant also lodged a copy email dated 10 July 2019. The Notice to leave was attached to the email. The email is from the email address Enquiries@PropBureau.co.uk. It is addressed to both Respondents. The email addresses of both senders and recipients are as specified in the copy tenancy agreement, which is also lodged. Clause 4 of the agreement states that communications will be by hard copy, by personal or recorded delivery or by email using the addresses set out in the agreement, and that notices will be sent by email.

57. The Notice to Leave is firstly challenged on the grounds that it does not contain the Applicant's address. Part 2 of the Notice states "I/we your landlord/landlords' agent: Miss Anne Dufty of Melville House, 70 Drymen Road". This is the address of Property Bureau. The First Respondent states that the person who serves the notice is required to put their name on it and sign it. Carol Anne Moss of Property Bureau signed and served the Notice. Therefore, it should contain her name, and not the Applicant's name. Furthermore, the address specified in Part 2 is not the Applicant's address. The First Respondent states that the Notice is therefore defective. No authority is provided in support of this.

58. The Tribunal is satisfied that the Notice was served by Carol Anne Moss, an employee of Property Bureau, who are the Applicant's agents. However, the Notice clearly allows for the name of either the landlord or the agent to be inserted in part 2. Both appear to be equally acceptable. The form must be signed, but nowhere does it state that the person signing, and the person named in part 2, must be one and the same. The agent signs only as agent of the landlord, not in any other capacity. The Tribunal also notes that this notice does not actually use the word "address" but "of". There appears to be no requirement to provide an actual home address and a contact address is therefore permissible and indeed quite common. The Tribunal is satisfied that these are not material issues. The prescribed elements of the notice are present. Furthermore, if the notice is defective, the provisions of Section 73 of the 2016 Act would apply. This provision is similar to section 21 of the 2010 Act. It states that "(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document". Section 73(2)(d) provides that this section applies to a Notice to leave as defined by Section 62. As Section 62 sets out the essential components of the Notice to Leave, and these are all present in the Notice which was served on the Respondents, the Tribunal is satisfied that the

defect (if it exists) does not materially affect the effect of the Notice.

59. The Notice is also challenged on the grounds that the home report which was sent with it was out of date and therefore could not be evidence of the intention to sell. The Tribunal notes that the wording of the Notice appears to indicate that it is not necessary for any evidence to be sent, but that the provision of supporting evidence might help the tenant to understand why an eviction order is being sought and that it is justified. The 2016 Act does not require evidence to be sent. Furthermore, there is no specification of the type of evidence that could or should be provided. The Tribunal is satisfied that the home report was a relevant document, and that the Applicant was entitled to use it as evidence of her intention, regardless of its age. In his evidence, Mr Monachan stated that a home report has a short validity period for mortgage purposes. If this is the case, it is understandable that a landlord might want to delay instructing a report (or a new report) until they are in a position to put the property on the market. However, even if the report were too old to constitute evidence of the landlord's intention at the date of service of the notice, the Tribunal is satisfied that it may not have been necessary for any evidence to be provided and the provisions of Section 73 in relation to minor defects could again apply. The Notice makes it clear, in part 2 and part 3, that the ground of eviction is that the landlord intends to sell. The essential components of the Notice to leave have been met and the document provided as evidence did not materially affect the effect of the Notice.

60. The Respondents next challenge the Notice to leave in relation to the email address from which it was sent and whether the correct notice period has been given.

61. The Second Respondent states that although the email with the Notice was delivered into her inbox on 10 July 2019, she was busy and did not open it until 18 July 2019. This being the case, she did not get the full notice period to which she was entitled. The Tribunal is not persuaded by this argument. For the purposes of the calculation of the notice period, Section 62 stipulates that "it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent." This does not mean that a notice which has been sent, but never been delivered, can meet the requirements of the legislation. Had the email been sent to an incorrect email address, and never delivered to the Second Respondent, then there would be no compliance with the 2016 Act since it could not be claimed that the notice had been "given". The presumption applies to the calculation of the date which is to be inserted in Part 4. This date is correct if the Notice makes provision for a 48-hour delivery period, the correct period of notice and then specifies the day falling after the expiry of the notice period. A tenant cannot defeat the provisions of the Act by simply choosing not to open an email or a letter enclosing the Notice. The Second Respondent contractually agreed to the notice being sent by email to a specified email address. Having done so, she cannot later claim that the correct notice period has not been given, because she chose not to open the email when it was delivered.

62. The First Respondent gave evidence that he did not receive the email of 10 July 2020 and did not become aware of it until he was sent an email by the Second Respondent on 18 July 2019. He lodged their email exchange in support of this evidence. What exactly happened to the email when it reached his account is less clear. He initially indicated that it had gone into "junk". However, when asked for further information about this during his evidence he denied this, became evasive, and said he did not know where it had ended up. He also stated that the enquiries email address had not been recognised by his computer but confirmed that he had been able to find it when he was alerted to its existence by the Second Respondent.

63. The First Respondent states that Section 26(3) of the 2010 Act is a rebuttable presumption; that the Applicants agents only communicated and served notices from email addresses other than the one in the tenancy agreement; that by their "persistent and prolonged conduct made it clear to the Respondent" that the emails address in the tenancy was of "no import"; that the sheer number of emails from personal email addresses of employees left the Respondent with the clear impression that these addresses would be used for communications; that the Applicant's solicitor submitted in open court that that Carol Anne Grant's email address was the correct one; that the Applicant is bound by the actings of her agent; that previous statutory notices were sent from personal email addresses and not the address specified in the tenancy agreement; that a previous application for an eviction order following upon a notice from a personal email address was withdrawn without reason; that the letting agents actions confirmed that the lease email address was not valid; that the use of the lease email address had the result of the First Respondent not receiving the Notice to Leave until 18 July 2019 and not therefore being given the required notice period.

64. The First Respondent states that the Applicant is personally barred from claiming that the enquiries email address was the correct one and furthermore, that the agents had acquiesced in the Respondent thinking that only the other email addresses would be used. The First Respondent also argues that the solicitor's statement at the CMD in the previous application also personally bars the Applicant from relying on the enquiries email address. The First Respondent refers to the cases of "Cairncross v Lorimer 1860 3 Macq 827 and Gatty v Maclaine 1921 SC HL 1 which was endorsed by Lord Nimmo at para 3 of William Grant and Others v Glen Catrine Bonded Warehouse 2001 SC 901." The First Respondent also argues that the solicitor's statement, made during the previous CMD, amounts to a "judicial admission".

65. The Tribunal firstly notes that the Respondent refers to section 26 of the 2010 Act. However, that provision only applies if the relevant legislation is silent on the issue (Section 1(2) of the 2010 Act). As indicated in paragraph 55 above, the relevant provision for a Notice to Leave is section 62(5) of the 2016 Act. This provision relates to the calculation of the date which is to be inserted in Part 4. A landlord is entitled to rely on this provision when calculating that date. Otherwise, it would be impossible for a landlord to accurately calculate the relevant date unless he handed the Notice to the tenant in person on a date of

his choosing.

66. From the evidence, the Tribunal notes the following: -

(a) The email sent to the Second Respondent was delivered to her on the date it was sent, namely 10 July 2020.

(b) Although the First Respondent states that did not see the email until he was contacted by the Second Respondent, he provided no very clear or satisfactory explanation for this. It had certainly been delivered, since he was able to locate it after he had been contacted by the Second Respondent.

(c) The email address from which the email was sent is the address specified in the tenancy agreement signed by the parties.

(d) In his submissions, the First Respondent says that the only evidence given to the Tribunal about the previous CMD (and what was said by the Applicant's solicitor) came from him. This is not the case. The Applicant gave evidence that he had made complaints about the regulations, so she had started again. She had not been at the CMD so presumably was relying on what she was told by her solicitor, or what was contained within the Tribunal's note. There was also the evidence of Carol Ann Moss who said that she was instructed to send the new Notice to leave from the address in the tenancy agreement. The First Respondent actually gave very limited evidence about the issue. When the Tribunal endeavoured to get more information from him about the matter, the first Respondent said that he could not remember and that it was too long ago. This was simply not credible given the extent to which he relies on this matter in his submissions. It appears that he recalls well what was said by Ms Cameron, and what he understood by it. However, he claims that he cannot recall how the matter came to be discussed during the CMD. The Tribunal also notes, from the email exchange, that the First Respondent's first response to the news about the Notice to leave, was to ask about the email address which had been used. The Tribunal is satisfied, from the evidence of the Applicant, and the submissions made by Ms Cameron, an officer of court, that the previous application was withdrawn following his challenge to the use of the personal email address. However, as the application was withdrawn, no decision was made by the Tribunal on the validity or otherwise of the notice to leave in that case.

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67. The Tribunal considered the doctrine of personal bar and its relevance to the application. The First Respondent made specific reference to comments made by Lord Campbell LC in the case of Cairncross v Lormimar. However, in the case of Ben Cleuch Estates v Scottish Enterprise Lord Reed says that the "classic formulation of a plea of personal bar is that of Lord Birkenhead LC in Gatty v Maclaine 1921 SC (HL) 1 at page 7: "Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon that belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time". As further explained in Volume 16 of the Stair Memorial Encyclopaedia, for personal bar to apply there must be representations by one party. The representations must relate to a

matter of fact. A statement of belief or opinion will not normally be interpreted as a representation of fact which would give rise to a claim of personal bar. To establish personal bar, the other party must prove that the representation led to him doing something he would not otherwise have done or refrained from doing something he would otherwise have done. Acquiescence would apply where there was conduct by a party which had the same effect. The conduct would have to be such that it would induce a reasonable man to believe that he was meant to act upon it, and which did in fact induce him to act upon it.

68. The Tribunal is satisfied that the Respondent has not established personal bar in relation to the issue of the email addresses. The Tribunal accepts that the Applicant's agent did not generally use the enquiries email address and that the Respondents received a huge number of emails, all from the personal email addresses of employees. However, to establish personal bar the Respondent would require to show that this would have induced a reasonable man to believe that the enquiries email address would never be used. It is hard to see how that conclusion could be reached since the enquiries email address is specified in the written contract. Furthermore, it is not suggested that the agent always used one other specific email address. It appears that the emails came from several different addresses. Most significantly, there is no evidence that the exclusive use of other email addresses led to any action or conduct by the First Respondent in reliance on it. He may have believed that emails from the agent would always come from the personal email addresses of their employees, but he didn't act upon this belief to his detriment. Personal bar does not apply.

69. The Tribunal is also satisfied that the Respondent has not established personal bar in relation to statements made by Ms Cameron at the CMD relating to the previous application. Firstly, the statement was made as part of a legal submission in legal proceedings. It was not a statement as to fact, rather an argument (or a statement of opinion) that the Applicant had complied with relevant legislation. Furthermore, the statement did not cause the Respondent to do something (or fail to do something) in reliance on the statement. The Tribunal also rejects the submission that Ms Cameron's statement was a "judicial admission" which precluded the use of the enquiries email address. A judicial admission made in the context of legal proceedings, in relation to a factual matter, only means that the matter does not require to be proved. It is not relevant to the Respondent's argument about personal bar.

70. The Tribunal notes that the parties agreed in the written tenancy contract that communication would be by email to the email addresses specified in the contract. A Notice to leave can only be served by email, if the parties have agreed to do so in writing. The Notice to leave was sent to the Respondents, from and to the specified addresses. The Tribunal is therefore satisfied that the Applicant has complied with the 2016 Act in relation to service of the Notice to leave. The Tribunal is also satisfied that the email with the Notice was sent on 10 July 2019, and that the correct period of notice specified in Section 54 was given. The Tribunal therefore determines that the Notice to leave submitted with the application is valid and that the Applicant has complied with the relevant provisions of the 2016 Act.

Rule 109 of the Procedure Rules

71. The First Respondent states that the Applicant has failed to comply with this rule because her own address is not provided, only the address of her representative. Rule 109 sets out the mandatory requirements for lodging an application for an eviction application in terms of Section 52. This includes the name and address of the landlord. The Rule does not stipulate that the address provided must be the actual home address of the landlord, only that an address is required. Furthermore, the purpose of Rule 109 (and indeed the other Rules which relate to specific applications to the Tribunal), is to ensure that an application provides certain information and is accompanied by certain documents. Failing this, the application may not be accepted **(**Rules 5 and 8 of the Procedure Rules). This application was accepted and referred to a Tribunal for a determination. The Tribunal is satisfied that it is not open to it to reconsider whether the application ought to have been accepted, or indeed to reverse that decision. Once accepted the application proceeds to a Tribunal for a determination. Rule 109 is not relevant to that determination.

Competency of the application against the Second Respondent.

72. The Second Respondent gave evidence to the effect that she is not a tenant, therefore the application against her is not competent. The Tribunal found her evidence on the issue somewhat confusing. She claimed that she is not a tenant, for the purposes of the application, but also stated that she is still on the lease and that she continued to contribute to the rent well after she had moved out. She advised the Tribunal that she moved out of the property in March 2018 but that the email from her to Property Bureau dated 20 March 2019, was the first time she had notified them that this was the case. In the email she asks that a new lease is arranged for the First Respondent only. This suggests that she was fully aware that further steps required to be taken before her interest in the tenancy could be terminated.

73. In her submissions the Second Respondent appears to claim that her email of 20 March 2019 is a notice under Section 49 of the 2016 Act to terminate the tenancy. However, she did not give evidence to this effect or put it to the Applicant or her witnesses that her tenancy had been terminated by notice. Section 49 stipulates that a notice to terminate by a tenant must be in writing and must state “as the day on which the tenancy is to end a day that is after the last day of the minimum notice period”. Section 48 (2) also states that the notice must specify a date. The email of 20 March 2019 does not specify a date or a period of notice. It is clearly not a notice in terms of Section 48 and 49, simply an email notifying the agents that she no longer lived there and wanted to be released from the lease. However, even if the email had met the requirements of Sections 48 and 49, it was only sent by one of the tenants. The Second Respondent argues that it is not necessary for notice to be given by all tenants and refers to various sections of the 2016 Act in support of this argument. However, the Tribunal is not persuaded by this submission. Section 78(3) states “In a case where two or more persons jointly are the under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise” This makes it clear that wherever there is a reference to “the tenant”

in the Act, it is a reference to all the tenants. As a result, Sections 48 and 49, (which refer to a tenant giving notice), require that notice to be by both individuals named as tenants on the tenancy agreement. Furthermore, this is also what is contracted by the parties. Clause 24 states "To end a joint tenancy, all the joint tenants must agree to end the tenancy. One joint tenant cannot terminate the joint tenancy on behalf of all joint tenants".

74. The Tribunal is satisfied that the Second Respondent is still a tenant of the property and that the application against her is competent.

The legal test for the eviction ground

75. Section 51 of the 2016 Act states "(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on the application by the landlord, it finds that one of the eviction grounds named in Schedule 3 applies. Ground 1 of schedule 3 states, "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. (3) Evidence tending to show that the landlord has the intention mentioned in subparagraph (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".

76. Ground 1 is a mandatory ground. If the Tribunal is satisfied that the ground has been established, the Tribunal must grant the order for eviction.

Entitlement to sell.

77. Ground 1 does not specifically state that a landlord must be the owner of the property which is the subject of the application. However, as Adrian Stalker states in "Evictions in Scotland", page 341, ""entitled to sell" presumably entails that the landlord is the owner of the property, which may be established by production of the title sheet from the Land Register".

78. The Tribunal was provided with the following evidence from the Applicant and her witnesses.

(i) Oral evidence from the Applicant that she purchased the property in 2004 and lived there for several years before renting it out. She has rented it out for 7 years. She is the current and sole owner.

(ii) Oral evidence from the Applicant that she is the landlord of the property in terms of the residential tenancy agreement being item 1 on the Applicants list of documents.

(iii) Oral evidence from the Applicant that item 7 on the list of documents is a sole selling rights agreement which she signed with Property Bureau. This identifies her as the client and the property as her property.

(iv) Oral evidence from Andrew Monachan that Property Bureau has managed the property on behalf of the Applicant, the owner, for a number of years, marketed it for sale on her behalf in 2018 and is instructed to market it for sale when the tenant moves out.

(v) Oral evidence from Andrew Monachan that item 7 on the Applicants list is a sole selling rights agreement between Property Bureau and the Applicant.

(vi) Oral evidence from Carol Anne Moss that she issued the Notice to leave on the instructions of the Applicant, the landlord.

(vii) Oral evidence from Jennifer Beavis that she contacted the First Respondent about access to the property on the instructions of the Applicant, the landlord.

(viii) Copy tenancy agreement signed by all parties which identifies the Applicant as landlord and Home Report which states that she is the seller.

(ix) Notice to leave which identifies her as the Landlord.

(x) Section 11 Notice which identifies her as the Landlord.

(xi) A copy of the title sheet for the property dated 4 December 2020 which identifies her as the proprietor.

79. The Respondents did not challenge the Applicant or her witnesses on their evidence as to ownership or entitlement to sell in cross examination. Furthermore, they did not give any evidence to the Tribunal on the issue of ownership or entitlement to sell. They gave evidence about the payment of rent to the Applicant, withholding rent and the Applicant's failure to fulfil her obligations as landlord. They also referred to many emails between themselves and Property Bureau, the Applicant's agent, in connection with tenancy related matters. It therefore appears that they do not dispute that the Applicant is the landlord of the property. It is suggested in submissions that the Applicant does not require to be the owner of the property to be the landlord and that she may be fulfilling that role in a different capacity. However, this was not put to the Applicant and appears to be no more than speculation on the part of the Respondents. A lease is usually granted by the owner of a property and there was no evidence given to the Tribunal that the Applicant was not the landlord, or that she let the property to the Respondents in any other capacity.

80. The Respondents devote a substantial amount of their written submissions to the issue of the title deeds. They state that these should be excluded for a variety of reasons. The Tribunal notes that this matter was considered during the second day of the hearing, on 4 December 2020. On 3 December 2020, the Respondents had submitted a motion to exclude the title deeds obtained from

the Land Register by the Tribunal. The Applicant opposed this but said that if they were to be excluded, the Applicant asked to be allowed to lodge a copy of the title deeds. The Tribunal adjourned and considered the request. The Tribunal determined that the deeds downloaded by the Tribunal should be excluded but that the Applicant should be allowed to lodge a copy of the title sheet.

81. As the Tribunal has already determined that the Applicant should be allowed to lodge a copy of the title sheet, the Tribunal is satisfied that it does not require to consider the Respondent's additional submissions on this issue.

82. The second part of the challenge to the copy title sheet relates to its evidential value. The Respondents argue firstly that, as the name on the copy title sheet is not the same as the name on the application form and all the tenancy related documentation, it cannot be taken to prove that the Applicant and the owner of the property are one and the same. The Tribunal is not persuaded by the Respondents' argument. It is not uncommon for people to use only their first and surnames, even where they have other middle names on their birth certificate. The Applicant gave evidence that her name is Anne Dufty and that she is the owner of the property. The failure to mention her middle name does not invalidate that evidence. Furthermore, the Respondents did not challenge her evidence about ownership during cross examination. The First Respondent argues that he could not do so because the Applicant gave her evidence on 27 October 2020 but did not lodge the copy title deed until 4 December 2020. This is not a convincing argument. Firstly, the Respondents did not require a copy of the title deed to challenge the Applicant's oral evidence on ownership and entitlement to sell. Furthermore, although the Applicant's copy of the title deed was not yet lodged on 27 October 2020, the Respondents had the copies obtained by the Tribunal which had not yet been excluded from the evidence. The Tribunal is entitled to obtain a copy of the title deed by virtue of Rule 20 of the Procedure Rules. This states that the Tribunal "may make such inquiries as it thinks fit for the purpose of exercising its functions". The Tribunal is therefore not restricted by the evidence presented by the parties to the application. The inquiries may include "(c) consideration of any report instructed by the First-tier Tribunal about any of the matters referred to in the application". The Tribunal copies were not excluded until 4 December 2020, when they were replaced by the copy lodged by the Applicant, and were therefore available on 27 October 2020, when the Applicant gave her evidence.

83. The First Respondent then challenges the authenticity of the title sheet lodged by the Applicant. In his written submissions he refers the Tribunal to the best evidence rule stating that this rule requires a party to lodge the principal document, unless the other party consents to a copy being provided. However, in his oral submissions he relies on Section 6 of the Civil Evidence Act 1982. (Section 6). This states "(1) For the purposes of any civil proceedings, a copy of a document, purporting to be authenticated by a person responsible for the making of the copy shall, unless the court otherwise directs, be – (a) deemed to be a true copy; and (b) treated for evidential purposes as if it were the document itself. (2) In subsection (1) above "copy" includes a transcript or

reproduction".

84. The Tribunal notes that the best evidence rule is largely irrelevant as a result of Section 6 in civil proceedings. Furthermore, both the Rule and section 6 relate to court proceedings. There is no authority produced that these rules of evidence must be strictly applied in proceedings before the Tribunal. The overriding objective requires the Tribunal to deal with the proceedings justly. This includes dealing with them in a manner which is proportionate to the complexity and seeking informality and flexibility. To this end the parties were allowed to lodge documents late and not penalised for failure to comply with the Procedure Rules. Rule 20 allows the Tribunal to make its own inquiries and obtain its own documents. In any event, while the copy of the title sheet downloaded from Registers of Scotland may not have the same evidential value as a certified extract, the Tribunal is still entitled to consider same as part of the evidence submitted by the Applicant. The Land Register is a public register, and anyone can download a copy of a title deed for a small fee. The copy lodged has been authenticated by Registers of Scotland on each page where it states "This is a copy which reflects the position at the date the title sheet was last updated. Crown Copyright 2020". The document also confirms the date and time on which it was downloaded (4 December 2020 at 10.52am). The Respondent also challenges the document because of the reference to the 11 May 2007, being the last date that it was updated. He suggests that this indicates that the document is out of date. This is clearly not the case. Had there been a later application to the Land Register which changed the ownership, the copy title sheet would clearly reflect that.

85. It is not clear what exactly the Respondents think should have been lodged by the Applicant to evidence ownership or entitlement to sell. They do not say. Their challenge to the Applicant's status is purely on the basis that the Applicant has not discharged the burden of proof in relation to entitlement to sell. They provide no evidence which contradicts the Applicants' position. They do not allege that the property is owned by a third party. It is certainly the case that the Applicant must establish the eviction ground. However, in the absence of any contradictory evidence, the Tribunal is satisfied that it can consider the copy title sheet when reaching its decision.

86. Having considered the oral and documentary evidence provided, the Tribunal is satisfied, on the balance of probabilities, that the Applicant is the owner of the property and that she is entitled to sell it.

Intention to sell for market value or put it up for sale within three months of the tenant ceasing to occupy it.

87. The Applicant provided the following evidence in support of the claim that she intends to sell.

(i) Oral evidence from the Applicant that she wants to sell the property, because of changes in her life and because the rent does not cover all the

costs associated with it and she does not wish to subsidise it any longer. She also stated that she had previously attempted to sell the property in 2018 with the First Respondent in occupation. She did not receive any offers for the property. She was not happy with the photographs and thought they might be adversely affecting the sale. She advised Property Bureau that she wanted to try again after the tenant had moved out and she had the opportunity to re-decorate. The First Respondent has continued to occupy the property since that date.

(ii) Oral evidence from Andrew Monachan who stated that the Applicant had instructed Property Bureau to market the property in 2018. A home report had been obtained and the property was marketed for between four and six weeks. There were 7 viewings during that time. No offers were received. He also gave evidence about an email sent to the Applicant on 27 February 2018 which refers to him going to the property to carry out a viewing. He stated that had taken the photographs and prepared the property schedule. He accepted that the property had not been marketed for long but stated that most properties sell within 2 to 3 weeks and the average number of viewings before a sale is achieved is 8. He also stated that it is easier to sell a property which is or will be unoccupied. Property Bureau had discussions with the Applicant, and she decided that she would withdraw the property, redecorate after the tenancy ended and re-market it at that point. Property Bureau is currently instructed to market the property once it is unoccupied. The Applicant has signed a sole selling rights agreement with Property Bureau.

(iii) Oral evidence from Jennifer Beavis, and emails between her and the First Respondent. She advised that she contacted him on behalf of the Applicant to ask for access for an updated home report. This report was not instructed because the First Respondent said access was conditional on certain information being given to the surveyor.

(iv) A home report dated February 2018, sole selling rights agreement dated November 2019 and property schedule for the property from 2018.

88. The Respondents provided the following evidence which they submit demonstrates that the Applicant is not a genuine seller.

(i) Oral evidence from both Respondents and emails showing that the Applicant made an unsuccessful attempt to raise the rent in November 2018. When this failed, a Notice to Leave was issued In January 2019. In her submissions the second Respondent states that a landlord who genuinely wanted to sell would not be seeking to increase the rent, as this suggests a long term arrangement is being made. The First Respondent states that this sequence of events demonstrates that the Applicant used the Notice to Leave as a “negotiating” or “beating” tool.

(ii) Oral evidence from both Respondents that the Applicant said that the property was untidy and not well kept by the Respondent. This was a lie. She had never visited the property. Both gave evidence that the property is

well maintained by the First Respondent.

(iii) Oral evidence from the First Respondent that the previous marketing of the property was secretive, suspect and may not have taken place. Although Andrew Monachan came to the property and took photographs, he did not explain what these were for. The Respondents did not see any for sale sign at the property. The First Respondent works from home and did not see any viewers. He did not see it advertised online**.** Furthermore, a genuine seller would not have withdrawn the property from the market after 2 weeks.

(iv) Oral evidence from the Second Respondent and emails regarding her approach to Property Bureau on 12 October 2020, indicating that she was interested in purchasing the property. The Applicant refused to enter any discussions with her, insisting on the eviction action being concluded first. It is submitted that a genuine seller would have been prepared to discuss a sale with the Second Respondent.

89. It is not disputed by the Applicant that there was an attempt to increase the rent in November 2018. She concedes that the agents did not follow the correct process, and that the Respondents refused to pay the higher figure. She denies that this attempt suggested that she was planning a long-term arrangement. The emails submitted by the First respondent tend to support her statement. It appears that the issue of increasing the rent was first raised in an email to the Respondents on 22 August 2018. In that email, the agent states that a previous notice to leave was being withdrawn. However, it is also stated that the Applicant intends to sell “in the short term” and that a further Notice to leave will be issued and followed by tribunal proceedings. This is what happened. A Notice was served in January 2019, and Tribunal proceedings were initiated, although withdrawn after a CMD. That same email indicates that the withdrawal of a previous notice to leave was conditional upon rent being brought up to date. This does suggest a degree of negotiation. However, it does not establish that the notice to leave served in July 2019, leading to the present proceedings, was not based on a genuine intention and plan to sell the property. The Applicant provided an explanation for the withdrawal of the first notice. The second led to proceedings which were withdrawn due to an issue with the notice to leave. In any event, the Tribunal only requires to be satisfied as to the Applicant’s intentions when the Notice was served in July 2019 and presently. The Tribunal is not persuaded that service of a previous notice to leave, after the failed attempt to increase the rent, demonstrates a lack of genuine intent on the part of the Applicant to sell the property.

90. The Tribunal notes that the Respondents appear to be claiming that the Applicant cannot be believed about her stated intentions because she has lied about other matters, such as the First Respondent’s tidiness. This is simply not a persuasive argument. Firstly, there is no real conflict between the evidence of the Applicant and the Respondent on this matter. The Respondents submissions state that the Applicant said that the First Respondent had not looked after the property with a view to obstructing the sale. That is not what she said. She said that she thought that the pictures of the property were not good and that she would have a better chance of selling if she could dress it for

sale. She did say that her interests and the First Respondent's interests in relation to the property were not the same and that his presence may be impeding the sale. She did not say that he had been obstructive or that he was untidy. However, even if the latter was implied, it does not mean that she was telling lies**.** Whether a property is well presented or in a good condition for sale can be a highly subjective issue. Opinions and standards vary from person to person. The Applicant and First Respondent may have quite different views about décor and presentation. The Applicant's stated that she reached her conclusions from looking at the marketing photographs. Furthermore, it is clear from the evidence of Mr Monachan that Property Bureau supported the Applicant's decision to improve the appearance of the property before making a further attempt to sell. He also confirmed that it is easier to sell a property without a sitting tenant. The Tribunal is satisfied that the Respondents have not established that the Applicant gave untruthful evidence on this issue or that her evidence is at odds with an intention to sell the property.

91. The Tribunal had some difficulty with the evidence and submissions from the Respondents which appear to suggest that the previous marketing of the property was a sham. Evidence was given by the First Respondent that he saw no evidence of the property being marketed, that he was unaware of the reason for the Andrew Monachan's visit or the photographs he took, that he did not see any viewers although he works from home, that there was no for sale sign and that the property was not advertised online. The first issue for the Tribunal is that none of this was put to any of the Applicant's witnesses. The Applicant and Mr Monachan were asked questions about the marketing but the only matter on which they were actually challenged was the length of time that the property was on the market and the suggestion that it had been taken off too soon.

92. In his submissions the First Respondent states that the Applicant failed to provide details of the seven viewers. As a result, the Respondents were unable to investigate. He also says that he works from home so would have seen them, had they existed. He did not ask Mr Monachan for more information about the viewers in cross examination. As a result, the Tribunal (and presumably the Applicant) were unaware that the Respondents disputed the existence of the viewers, until the Respondents themselves gave evidence. The Tribunal also notes that some of the First Respondent's statements about the evidence given by Mr Monachan are simply not accurate. Mr Monachan said that the property was marketed for between 4 and 6 weeks, not two. He said that there were seven viewers, not that he remembers there being seven viewers. He was not asked whether he remembers this to be the case or whether he had checked his records before the hearing. The First Respondent says that there were no marketing materials produced as evidence. Mr Monachan referred to the property schedule which he had prepared (item 9 on the Applicant's list) and to the home report which he had instructed (item 10 on the Applicant's list). The Respondents invite the Tribunal to reject Mr Monachan's evidence, describing aspects of it as "farcical". However, there is nothing in the evidence or submissions which supports this conclusion.

93. The Tribunal was not persuaded by the First Respondents own evidence on this matter. Firstly, the claim that he did not know the reason for Mr Monachan's visit and the photographs is not consistent with the unchallenged evidence from Mr Monachan about the visit and their discussions. Nor is it consistent with the email of 10 April 2018 in which the First Respondent asks if the property is still on the market as it "no longer appears on online portals". This clearly demonstrates that he was aware of the situation and perhaps, that he had been monitoring it. Lastly, his evidence that there could not have been any viewers because he did not see them is again not convincing. Had he challenged Mr Monachan on this, an explanation might have been forthcoming. He chose not to do so. On the other hand, Mr Monachan advised the Tribunal that he had carried out some of the viewings. This is supported by the email he was referred to by Ms Cameron, dated 27 February 2018, which says that he was due to go to the property for a viewing the following Friday.

94. The Tribunal prefers the evidence of Mr Monachan. His involvement with the property is in a purely professional capacity. His evidence was consistent with the documents submitted, such as the home report, the property schedule, and the contract with the Applicant. It was also consistent with the Applicant's own evidence. The Tribunal found Mr Monachan to be both credible and reliable. On the other hand, for the reasons stated, the Tribunal found the First Respondents evidence on this issue entirely unreliable. The Tribunal is satisfied that the property was unsuccessfully marketed between February and April 2018, as described by the Applicant and Mr Monachan in their evidence.

95. As previously indicated the Tribunal accepts that it does not need to be satisfied that the Second Respondents enquiry about the property on 12 October 2020 was genuine. However, the Applicant's response to the enquiry is relevant. The Second Respondents account of the Applicant's evidence on this matter is not accurate. She says that the Applicant insisted on the eviction action being settled before she would consider an offer. What the Applicant actually said in her evidence was that the Second Respondent could make an offer once the property was on the market and that this would be after the First Respondent had moved out. This was corroborated by Andrew Monachan, who had actually spoken to the Second Respondent at the time of the enquiry. The Tribunal notes that the Second Respondent did not pursue the matter further. She has access to the property. She could have had it valued and made a verbal or even written offer, perhaps subject to survey. She did not do so. The Tribunal also notes that the property has not been formally valued since February 2018, that it has not been marketed since March/April 2018, that Mr Monachan is of the view that there is a limited market for properties with a sitting tenant and that the Property Bureau supported the Applicant's decision to take the property off the market, re-decorate and market it again once it was unoccupied. In those circumstances, the Applicant's failure to pursue the Second Respondent's expression of interest on 12 October 2020 does not necessarily lead to the conclusion that she does not want to sell. Furthermore, the eviction ground requires that the property be sold for "market value". A proposed private sale, where the property had not been placed on the open market, might not be enough to satisfy the legal test if the proposed sale was conditional on vacant

possession.

96. Ground1 of Schedule 3 ground specifies documents “tending to show” an intention to sell. However, the use of the word “for example” makes it clear that the landlord’s intention can be established in other ways. In the present case, as well as the various documents submitted, the Tribunal heard oral evidence from the Applicant and her witnesses.

97. The meaning of “intends” has been the considered by the Courts in connection with other legislation. It has been established that a landlord has to prove that the intention is “genuine” and “firm and settled” (Fisher v Taylor’s Furnishing Stores 1956 2 QB 78 84). The Tribunal found the Applicant to be credible and reliable. Her evidence was consistent with that of her witnesses, who were also found to be credible and reliable, and with the documents lodged in connection with the application. The Tribunal is satisfied that she decided to sell the property in early 2018 and put it on the market at this time. She was unsuccessful and decided to make a further attempt once the property was unoccupied and she had the opportunity to re-decorate. The property has continued to be occupied by a tenant since that date. The Applicant instructed service of a Notice to leave in July 2019. She intended to sell the property at that time. The First Respondent did not move out of the property and the Applicant initiated eviction proceedings. The Tribunal is satisfied that the Applicant’s intention to sell is genuine, firm and settled.

98. The Tribunal concludes that the Applicant is entitled to sell the let property and that she intends to sell it for market value, or at least put it up for sale, within three months of the Respondents ceasing to occupy it. The Tribunal is satisfied that the ground for eviction has been established and that an eviction order must be granted.

Decision

99. The Tribunal determines that an order for eviction must be granted.

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.

J Bonnar

24 February 2021

Josephine Bonnar, Legal Member