



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/22/0131

Re: Property at 46 The Maltings, Montrose, Angus, DD10 8PE (“the Property”)

Parties:

**Mr Justin Richard Roberts, 2A Rosehill Road, Montrose, Angus, DD10 8ST
 (“the Applicant”)**

**Miss Holly Elizabeth Ogden, 46 The Maltings, Montrose, Angus, DD10 8PE
 (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By Lease dated 19th November 2018, the Applicant Let the property to the Respondents.
2. The Lease provided for service of documentation by email;
3. On 12th July 2021 the Applicant served a Notice to Leave upon the Respondent intimating that the Applicant wished vacant possession of the Property as the Applicant intended to sell the property;
4. A Notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;

5. On 17th January 2022, following the expiry of the period of notice, the Applicant presented an application to the Tribunal seeking an Order for eviction in terms of Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016;

THE CASE MANAGEMENT DISCUSSION

6. The Applicant was represented by Mr A Smith of Sutherland Management(Dundee) Ltd. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent on 23 February 2022. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
7. The Applicant’s representative confirmed it was the Applicant’s intention to sell the Property. He had produced to the Tribunal correspondence from an estate agent in which it was agreed that they would market the property and would arrange for the preparation of a home report once they were in a position to actively market the property;
8. Mr Smith advised that his firm had been managing two properties on behalf of the Applicant and had received instructions to take steps to obtain vacant possession of both with a view to both being sold. The other property, situated at 20 Arklay Street, Dundee, is already being marketed for sale by the same estate agents who are to market this Property. There is no doubt the Applicant wishes to sell the Property;
9. As far as Mr Smith is aware the Applicant intends to market the Property for sale as soon as possible. He points out that the process started in July 2021 when the Notice to Leave was served;
10. Despite the Respondent not participating in the Case Management Discussion the Tribunal made enquiry of Mr Smith in relation to her to enable it to consider whether it was reasonable to grant an order for eviction. The Tribunal was advised of the following:-
 - a) Miss Ogden has been a good tenant and has only been asked to leave due to the Applicant’s desire to sell the Property;
 - b) She has been in e mail and telephone correspondence with Mr Smith in relation to the Notice to Leave;
 - c) She has indicated that she is willing to leave but to assist with obtaining alternative accommodation from the local authority she wishes an eviction order to be granted, as opposed to her leaving the property voluntarily;
 - d) She has 2 young children, the younger one being born during January 2022;
 - e) Mr Smith is not aware of any physical nor mental health difficulties affecting either Miss Ogden nor her children;
 - f) In his previous discussions with her he did not identify any such issues nor was he advised of any;

- g) Mr Smith's understanding is that Miss Ogden intends to leave the Property but wishes an eviction order to be granted before doing so

FINDINGS IN FACT

11. The Tribunal found the following facts to be established;
- a) By Lease dated 19th November 2018, the Applicant let the Property to the Respondent;
 - b) The lease provided for service of documentation by email;
 - c) On 12 July 2021 the Applicant served a Notice to Leave upon the Respondent, by e mail, intimating that the Applicant wished vacant possession of the Property as the Applicant intended to sell the Property;
 - d) A Notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
 - e) On 17th January 2022, following the expiry of the period of Notice to Leave, the Applicant presented an application to the Tribunal seeking an order for eviction;
 - f) The Applicant is entitled to sell the Property;
 - g) The Applicant intends to sell the Property for market value;
 - h) The Applicant has engaged estate agents to act in the marketing of the Property once vacant possession is obtained;

REASONS FOR DECISION

- i) From the information presented to the Tribunal both by oral submissions made on behalf of the Applicant and in an e mail exchange produced prior to the Case Management Discussion it appeared the Tribunal was presented with a situation which is not entirely uncommon in applications, that being that the Respondent was willing to vacate the premises but, if she did so without an order for eviction from the Tribunal, may be deemed as intentionally homeless by the Local Authority. To guard against that, it was necessary for an eviction order to be granted to enable that to be exhibited to the local authority to assist with the allocation of alternative accommodation;
- j) On the basis of the information provided to the Tribunal by the Applicant to the effect that he intended to sell the property, supported by correspondence from an estate agent who is engaged in that regard, together with the fact that the Respondent did not participate in the Case Management Discussion, had not lodged any written submissions in advance and therefore did not oppose the granting of an order, and the information referred to at paragraphs 7 – 9 above, the Tribunal considered that it was reasonable, in the circumstances, for an Order for eviction to be granted;

DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 46 The Maltings, Montrose, Angus, DD10 8PE and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 13 June 2022

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.

Virgil Crawford

Legal Member/Chair

6th May 2022

Date