



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

**Chamber Ref: FTS/HPC/EV/21/0741**

**Re: Property at 16A Crown Terrace, Partick, Glasgow, G12 9ES (“the Property”)**

**Parties:**

**Wilma Paxton Doherty, East Kinord Cottage, Dinnet, Aboyne, Aberdeenshire, AB34 5LQ (“the Applicant”)**

**Nicole Bryce, Gavin McFadyen, 16A Crown Terrace, Partick, Glasgow, G12 9ES; 16A Crown Terrace, Partick, Glasgow, G12 9ES (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the applicant against the respondents. The tribunal delayed execution of the order until 30 July 2021.**

1. An application was received from the landlord’s solicitor on 24 March 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 1 and 12 as set out in Schedule 3 of the 2016 Act.
2. A order for payment had been granted on 5 March 2021 by a differently constituted tribunal in favour of the applicant against the respondents in respect of rent arrears totalling £9,327.67 (Chamber reference FTS/HPC/CV/21/0083).
3. Attached to the application form in respect of the current application were:

- (i) Paper apart setting out in more detail the applicant's submission in relation to the grounds on which an order was sought.
  - (ii) Copy Private Residential Tenancy Agreement between the parties which commenced on 16 February 2018.
  - (iii) Copy notice to leave dated 21 August 2020, citing grounds 1 and 12, and stating the date before which proceedings could not be raised to be 24 February 2021.
  - (iv) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to Glasgow City Council on 24 March 2021.
  - (v) Rent statement showing the rent outstanding as at 17 March 2021 to be £10547.67.
  - (vi) Copy letters from Martin and Co, the applicant's letting agent, addressed to the respondents, relating to their rent arrears as at 23 October, 6 November and 9 December 2020.
  - (vii) Terms of business between the applicant and Rettie Estate Agents relating to the sale of the property signed by the applicant and dated 16 March 2021.
4. Following a request from the tribunal administration, an email was received from the applicant's solicitor on 23 April 2021, attaching proof of service of the notice to leave on the respondent by email on 21 August 2020.
5. The application was accepted on 27 April 2021. Notice of the case management discussion (CMD) scheduled for 15 June 2021, together with the application papers and guidance notes, was served on both respondents by sheriff officers on behalf of the tribunal on 17 May 2021.
6. No written representations were received from the respondents prior to the CMD.
7. An updated rent statement was received by email from the applicant's solicitor on the morning of the CMD on 15 June 2021, showing the outstanding rent to be £2747.67 as at 1 June 2021.

### **The Case Management Discussion**

8. A CMD was held by teleconference call on 15 June 2021. The applicant was represented by Ms Euphemia Matheson, solicitor of Bannatyne Kirkwood France and Co. Mr Gavin McFadyen, the second named respondent, was present on the call and represented himself and the first-named respondent.
9. Mr McFadyen told the tribunal that he had paid the outstanding rent arrears in full to the applicant's letting agent earlier that day. He said that his business was now up and running again, and that he was back at work. Ms Matheson confirmed to the tribunal that a substantial payment had been made towards the outstanding arrears, and that the remaining balance was now £47.60.

10. She confirmed that the applicant accordingly no longer wished to proceed with the application on ground 12 as set out in Schedule 3 of the 2016 Act, as this ground no longer applied. She confirmed that the applicant, however, still sought an eviction order in terms of ground 1, namely that the applicant intends to sell the property. She confirmed that the applicant still intended to do so despite the repayment of the arrears by the respondents.
11. Ms Matheson told the tribunal that the respondents had repeatedly said that they would be moving out of the property, but had not done so. She said that the applicant had given the respondents several opportunities to leave the property voluntarily. Mr McFadyen had told the tribunal at the CMD in relation to case reference FTS/HPC/CV/21/0083 on 5 March 2021 that they would move out on 28 April 2021 into a new property, but they had not done so. The respondents had then said they would move out in May but had failed to do so. She suggested that the respondents had no intention of vacating the property. She said that the respondents' refusal to leave the property had seriously prejudiced the applicant's ability to market the property.
12. Ms Matheson said that the estate agent had been out to value the property, but that she was unsure as to whether the applicant had yet instructed a home report. She noted that the applicant may not have done this yet given the three month shelf life of the home report.
13. Mr McFadyen did not dispute that there had been a delay in the respondent moving out of the property. He told the tribunal that he and his family (his wife, Ms Bryce and his teenage stepson) had planned to move into a new build property provided by a family member on 28 April. However, the new property had not yet been ready to move into, and they had then planned to move in May, but the property was still not completed. He said that the new property had only received a completion certificate around two weeks prior to the CMD.
14. Moreover, the new property was within the G40 postcode, which had been badly affected by covid-19 in recent weeks. Mr McFadyen told the tribunal that he had serious health issues and had been in hospital several times over the past year. He had therefore been concerned about moving into the area while there was a covid-19 outbreak there. He suggested that moving house was not permitted during a covid-19 outbreak, although Ms Matheson pointed out that this had not been the case for some considerable time.
15. Mr McFadyen emphasised that he intended to leave the property, and told the tribunal that he anticipated that he and his family would move out by the end of June. While he stated that he definitely intended to move out, he seemed slightly unsure as to whether he would be in a position to do so by that date. He said that he had no issues with the applicant putting the property on the market while he and his family were still living there.

## Findings in Fact

16. The tribunal made the following findings in fact:

- The applicant is the owner of the property and is the registered landlord of the property
- There was a private residential tenancy in place between the parties, which commenced on 16 February 2018.
- The monthly rent payable in terms of the tenancy agreement was £1175 per month, payable in advance on the 16th of each month.
- The notice to leave was dated 21 August 2020 and was sent by separate email to each respondent on that date. The notice stated that an application for an eviction order would not be submitted to the tribunal before 24 February 2021.
- The respondents had paid almost all of the outstanding rent arrears as at the date of the CMD.
- The applicant intended to sell the property or put it up for sale within 3 months of the respondents ceasing to occupy it.

## Reasons for decision

17. Firstly, the tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020) (“the 2020 Act”).
18. The tribunal then considered whether ground 1 had been established by the applicant.
19. Ground 1 as set out in Schedule 3 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states:

### ***Landlord intends to sell***

*1(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph*

*(1) applies if the landlord—*

*(a) is entitled to sell the let property, 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, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

20. The tribunal was satisfied on the basis of all the evidence before it that the requirements for ground 1 were established. The applicant is the owner of the property and is therefore entitled to sell it. The terms of business document produced by the applicant's solicitor tended to show that the landlord had the intention to sell the property within 3 months of the respondents ceasing to occupy it.
21. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 1(2) (c) of schedule 3 of the 2016 Act. In doing so, it took into account all of the circumstances of the case. The tribunal noted that Mr McFadyen had found alternative accommodation for himself and his family, and that they intended to move into this in the near future. He also stated that the respondents had no objection to the applicant placing the property on the market while they were still living there.
22. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the respondents under section 51 and ground 1 in Schedule 3 of the 2016 Act.
23. The tribunal noted that the respondents had secured another property to live in, and that they intended to move by the end of June 2021. To allow the respondents sufficient time to leave the property, in the event that they were unable to move by that date, the tribunal ordered a delay in the execution of the order until 30 July 2021, in terms of rule 16A (d) of the 2017 rules.
24. Ms Matheson confirmed that as the outstanding arrears balance was now so low, and as the tribunal had granted an eviction order, the applicant wished to withdraw the accompanying civil proceedings application (reference no: FTS/HPC/CV/21/0746). The tribunal did not therefore consider that application further.

25. Mr McFadyen stated towards the end of the CMD that he had been recording the proceedings. The tribunal chairperson advised him that, as she had advised the parties at the start of the CMD, it is forbidden to make and unauthorised recording of the tribunal proceedings. She therefore directed him to delete the recording as soon as possible.

### **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.**

**S O'Neill**

15/06/2021

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**Legal Member/Chair**

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**Date**