



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

**Chamber Ref: FTS/HPC/EV/20/1597**

**Re: Property at 32 Seil Drive, Glasgow, G44 5DZ (“the Property”)**

**Parties:**

**Mr Luke Stephen Jones, Ms Laura McIntyre, 35 Linndale Drive, Glasgow, G45 0QE; 35 Linndale Drive, Glasgow, G44 5DZ (“the Applicants”)**

**Miss Ashleigh Devlin, Mr David Vincent, 32 Seil Drive, Glasgow, G44 5DZ; 32 Seil Drive, Glasgow, G44 5DZ (“the Respondents”)**

**Tribunal Members:**

**Andrew Upton (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted under Ground 4 in respect that the Applicants intend to live in the Property.**

**FINDINGS IN FACT**

1. The Applicants are the landlords, and the Respondents the tenants, of the Property under and in terms of an unwritten Private Residential Tenancy Agreement which commenced on 2 November 2019.
2. By notice dated 1 April 2020 and served on the Respondents by email on 1 April 2020, the Applicants gave Notice to Leave specifying, on a period of 28 days, that they (i) intended to sell the Property, and (ii) intended to reside in the Property, and that an application for the eviction of the Respondents would not be raised prior to 1 May 2020.
3. The Applicants intend to live in the property for a period of at least 3 months.

## **FINDINGS IN FACT AND LAW**

1. The Applicants having served Notice to Leave on the Respondents on a period of notice of 28 days specifying, as a ground for eviction, that they intended to live in the property, and that period of notice having expired, and the Respondents having remained in the property, an eviction order must be granted.

## **STATEMENT OF REASONS**

1. This Application called for its Case Management Discussion by teleconference call on 16 October 2020. The Applicants were both present on the call. The Respondents were neither present nor represented on the call.
2. In this Application, the Applicants seek an eviction order. They assert that they are the landlords, and the Respondents the tenants, of the Property under and in terms of an unwritten Private Residential Tenancy Agreement which commenced on 2 November 2019. By notice dated 1 April 2020 and served on the Respondents by email on 1 April 2020, the Applicants gave Notice to Leave specifying, on a period of 28 days, that they (i) intended to sell the Property, and (ii) intended to reside in the Property, and that an application for the eviction of the Respondents would not be raised prior to 1 May 2020. At the Case Management Discussion, the Applicants confirmed that, when the Notice to Leave was served, they were not certain whether they would be moving into the Property or marketing it for sale. They have since decided to move into the Property. That intention is clear from the correspondence produced with the Application.
3. The Respondents have had notice of the Application and supporting documentation, and of the Case Management Discussion. They have chosen not to take any active part in these proceedings to dispute the Applicant's assertions in the Application. Accordingly, I consider that the following facts are not in dispute:-
  - a. The Applicants are the landlords, and the Respondents the tenants, of the Property under and in terms of an unwritten Private Residential Tenancy Agreement which commenced on 2 November 2019.
  - b. By notice dated 1 April 2020 and served on the Respondents by email on 1 April 2020, the Applicants gave Notice to Leave specifying, on a period of 28 days, that they (i) intended to sell the Property, and (ii) intended to reside in the Property, and that an application for the eviction of the Respondents would not be raised prior to 1 May 2020.
  - c. The Applicants intend to live in the property for a period of at least 3 months.
4. In terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"):-

***“51 First-tier Tribunal's power to issue an eviction order***

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

***52 Applications for eviction orders and consideration of them***

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
  - (a) subsection (3), or
  - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
  - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
  - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

**54 Restriction on applying during the notice period**

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.
- (2) The relevant period in relation to a notice to leave—
  - (a) begins on the day the tenant receives the notice to leave from the landlord, and
  - (b) expires on the day falling—
    - (i) 28 days after it begins if subsection (3) applies,
    - (ii) 84 days after it begins if subsection (3) does not apply.
- (3) This subsection applies if—
  - (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or
  - (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
    - (i) that the tenant is not occupying the let property as the tenant's home,
    - (ii) that the tenant has failed to comply with an obligation under the tenancy,
    - (iii) that the tenant has been in rent arrears for three or more consecutive months,
    - (iv) that the tenant has a relevant conviction,
    - (v) that the tenant has engaged in relevant anti-social behaviour,
    - (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.
- (4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

**Sch.3, Para 4 Landlord intends to live in property**

- (1) It is an eviction ground that the landlord intends to live in the let property.

- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.
  - (3) References to the landlord in this paragraph—
    - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
    - (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.
  - (4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.”
5. In terms of Rule 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure, the Tribunal can do anything at the Case Management Discussion that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal must, when making a decision, have regard to the overriding objective to deal with proceedings justly, including by dealing with proceedings expeditiously.
6. The Notice to Leave was served within the first six months of the tenancy. Accordingly, the notice period to be given in terms of s.54(2). The Notice to Leave gave 28 days' notice, and is therefore valid.
7. The ground relied upon by the Applicants is ground 4, which is that they intend to live in the let property for a period of at least 3 months. Their intention to do so is not disputed by the Respondents. I am satisfied that the ground is established.
8. Ground 4 is a mandatory ground. If established, there is no discretion. The Tribunal must grant the order. Since the notice pre-dates the coming into force of the Coronavirus (Scotland) Act 2020, there is no requirement to consider whether it is reasonable to grant the order or not.
9. There is no need to delay these proceedings further. For the reasons set out above, I must grant the order. For the purposes of s.51(4) of the 2016 Act, I find that the Private Residential Tenancy is brought to an end on 16 October 2020.

## **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.**

# A Upton

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**Legal Member: Andrew Upton**

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**Date: 16<sup>th</sup> October 2020**