



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland)Act 2016**

**Chamber Ref: FTS/HPC/EV/21/0896**

**Re: Property at VATNAGARTH, 2 LOVERS LOAN, LERWICK, SHETLAND, ZE1 0BA (“the Property”)**

**Parties:**

**Ms AGNIESZKA KOZERA, UL KWIATOWA 29 46060 GORKI WOJ, OPOLSKIE, POLAND, Poland (“the Applicant”)**

**Mr RODERICK JOSEPH READ, MS KIRSTY MARGARET BRIGHTWELL, VATNAGARTH, 2 LOVERS LOAN, LERWICK, SHETLAND, ZE1 0BA (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 of Schedule 3 to the 2016 Act.**

**Background**

1. This is an application lodged by the Applicant with the Tribunal on 12 April 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act).

2. The Applicant lodged with the application the following: -

- The Tenancy Agreement showing a start date of 15 July 2020

- Notice to Leave dated 23 September 2020, providing that the application will not be submitted to the Tribunal for an eviction order before 1 April 2021
- Intimation of Notice to Leave by email to the Respondents dated 23 September 2021.
- Section 11 Notice to Shetland Islands Council together with confirmation e-mail to the Council dated 12 April 2021
- Email from the joint proprietor of the Property Mr Michael Rylko authorising the Applicant to act on his behalf
- Letter of Engagement from Wright & Crawford regarding the sale of the Property dated 17 February 2021
- Letter of Offer from Neil Risk solicitors dated 17 February 2021
- Letter of Acceptance from Wright and Crawford solicitors dated 11 March 2021
- Letter accepting the Qualified Acceptance from Neil Risk solicitors to Wright and Crawford dated 24 March 2021

3. A copy of the application and supporting documents were served on the Respondents by Sheriff Officers on 6<sup>th</sup> May 2021. Both parties were informed that a Case Management Hearing (CMD) would take place by telephone conference on 2 June 2021 at 10am and that they were required to participate. Following that CMD, at which both parties participated, Directions were issued by the Tribunal, and the case continued to a Hearing on 21 July 2021. This was on the basis that the Tribunal did not consider that it had sufficient information before it to reach a final decision. The Application was opposed on the basis that the Respondent submitted it was unreasonable for the Tribunal to grant the Order.

4. Prior to the Hearing the Applicant lodged further documents with the Tribunal which were crossed over to the Respondent namely, -

- Home Report dated 10 February 2021
- Home Report dated 5 July 2021
- Letter of Acceptance from Wright and Crawford dated 21 June 2021
- List of similar properties for sale in Shetland compiled by the Applicant
- Email correspondence between the Applicant and Letting Agent between September 2020 and March 2021
- Letter from Purchasers dated 23 June 2021
- Email correspondence between the Applicant and the Respondent between 3 and 4 July 2021

5. The Applicant also lodged a list of witnesses

### **The Hearing**

6. The Hearing took place by teleconference at 10am on 21 July 2021.

7. The Applicant, Ms Kozera was present. She was represented by Ms Kirstie Donnelly Solicitor. Both Respondents were present although Ms Brightwell required to leave the Hearing at 11am. She said that she was content that Mr Read continued with the Hearing on her behalf before she left the teleconference.

8. Mr Read said that he had lodged with the Tribunal 21 attachments (amounting to 9 MB) by email at 21.19 on 5 July 2021. These had not been received by the Tribunal members nor crossed over to the Applicant. Mr Read said that he had requested when he submitted the documentation for an acknowledgement but had not received the same. He had re-sent the same by email after this was queried by the Tribunal's Clerk this morning.

9. Ms Donnelly said that she had not had any intimation of the Productions lodged by the Respondent with the Tribunal to date. She pointed out that she had submitted a hard copy of her productions to the Tribunal to comply with the Tribunal's Practice Direction. She also had served the same on the Respondent and indicated that she had a signed for recorded delivery acknowledgement that these papers were served on 9 July 2021.

10. Ms Brightwell said that the Respondent had not received these hard copies and expressed concern regarding this. There was no suggestion that the Respondent had not received electronic versions of the Applicant's productions.

11. Ms Donnelly indicated that she would take exception to not having received prior notice of the Respondent's productions but that the position may well be academic as the Respondent, she believed had now made an offer on another property.

12. The Tribunal enquired as to the position. Ms Brightwell said that they had been looking for properties to buy in the local area for a long time. In June 2021, a few had come on the market, and they had been successful in bidding for one. An agreement had been reached in principle regarding that purchase. She said that matters were in the hands of the Respondents' solicitors and that there were no issues with their mortgage. As yet no entry date was fixed.

13. Ms Brightwell said that the only issue she had was in relation to the date that the Respondent would be required to vacate the Property. She suggested the process with solicitors to purchase their new property may take 4-5 weeks.

14. Ms Donnelly said that if an order were granted by the Tribunal today that it would not be issued for 30 days to allow for the appeal period and that there would need to be a 2-week period after service of a charge so that would in any event afford the Respondent 6 weeks to vacate.

15. Ms Brightwell said that she suspected that entry would be early to mid-September 2021, but currently could not give a definite date. She asked the Applicant to consider giving the Respondent until the end of September to vacate the Property.

16. The Tribunal adjourned briefly to allow the Applicant to discuss matters with her solicitor.

17. When the Tribunal reconvened Ms Donnelly said that if the Respondent were to consent to the order being granted today, that the Applicant would give an undertaking not to enforce the order, until the end of September 2021, and would not physically evict the Respondent prior to that date. She said that was more than

reasonable and there had been a degree of compromise by the Applicant agreeing to this. She said that she would still be insisting on an order being granted to allow her client security and certainty.

18. A further brief adjournment was afforded to allow the Respondent time to discuss the position. Mr Read then returned to the teleconference and indicated he had sufficient time to discuss matters with Ms Brightwell.

19. After some discussion between the parties an agreement was reached over the teleconference call. At first the Respondent requested that the Applicant extended her undertaking not to enforce the order until the end of October 2021. Eventually parties agreed that the Order would not be enforced until 8 October 2021.

20. The Respondent confirmed that he would not in the circumstances oppose the Application and accepted that in the circumstances it was reasonable to grant the application.

21. In the circumstances there was no need for the Tribunal to formally receive the Respondents' productions or for there to be any motions made regarding the same.

22. Ms Donnelly proceeded by submissions, inviting the Tribunal to grant the Order, with an undertaking provided by the Applicant not to enforce the same until 8 October 2021. This would allow the Respondent time to vacate as agreed.

### **Findings in Fact**

23. The Applicant and the Respondent entered into a private residential tenancy agreement for the Property with a start date of 15 July 2021.

24. The rent payable was £980 per calendar month.

25. The Applicant has decided to sell the Property. An offer has been accepted. Missives have been concluded. The Applicant is the heritable proprietor of the Property and is entitled to sell it.

26. The date of entry regarding the sale of the Property has been re-negotiated due to the Tribunal proceedings.

27. The Home Survey Report dated 5 July 2021 values the Property at £320,000.

28. The Property is being sold at the valuation price by the Applicant.

29. On 23 September 2020, the Applicant served a Notice to Leave on the Respondent in terms of section 50 of the 2016 Act.

30. On 12 April 2021, the Applicant submitted an application to the Tribunal.

31. The Applicant seeks recovery of the Property in terms of Ground 1 of part 1 of Schedule 3 to the 2016 Act. The Applicant has produced evidence of entitlement to sell the Property and of his intention to sell the Property immediately.

32. The Respondent offers no resistance to this application

33. It is not argued that it is unreasonable to grant an order for possession of the Property. The weight of reliable evidence indicates that it is reasonable to grant an order for possession of the Property to the Applicant.

### **Reasons for Decision**

34. The Tribunal, considering the Respondent's change of position, found that the essentials of the ground relied upon by the Applicant were made out. The Applicant had provided evidence of intention to sell the Property which was not disputed.

35. The Applicant has now relocated to Poland and is having to rent accommodation there for both herself, her partner and their 2 children. They are unable to purchase a property for themselves until they receive the proceeds of sale for the Property after vacant possession is obtained. The Applicant has been under a great deal of financial pressure due to the delay in the Respondent leaving the Property.

36. The Respondent had made an offer on another property which had in principle been accepted. The Respondent offered no defence to the application. In all the circumstances the Tribunal deemed it reasonable to grant the order sought.

37. An undertaking was provided by the Applicant that the Order for Possession in relation to the Property would not be enforced until 8 October 2021.

### **Decision**

38. For the foregoing reasons the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the 2016 Act under Ground 1 of part 1 of Schedule 3 to the 2016 Act.

### **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.**

21 July 2021

Legal Member/Chair

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Date