



**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/22/0015**

**Re: Property at 3/1 185 Strathmartine Road, Dundee, DD3 8BL (“the Property”)**

**Parties:**

**Mr Jamie Wallace, 15 Blackmore Avenue, Southall, UB1 3ES (“the Applicant”)**

**Mr Dale Gordon, 3/1 185 Strathmartine Road, Dundee, DD3 8BL (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber dated 3<sup>rd</sup> January 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) Act 2016 that the Applicant wishes to sell the Property.
2. The application included:-
  - a. Private Residential Tenancy Agreement with commencement of tenancy being 13<sup>th</sup> May 2019;
  - b. Notice to Leave dated 24<sup>th</sup> February 2021 stating an application would not be submitted to the Tribunal before 1<sup>st</sup> September 2021 and that vacant possession was required by 31<sup>st</sup> August 2021;

- c. Section 11 notice noting proceedings would not be raised before 3<sup>rd</sup> January 2022;
  - d. Copy email dated 15<sup>th</sup> March 2022 serving Notice to Leave upon the Respondent;
  - e. Copy of documentation from Remax estate agent confirming instruction to sell the Property dated 12<sup>th</sup> February 2021;
  - f. Copy of letter from DM Hall confirming instruction to conduct a single survey report dated 21<sup>st</sup> February 2021.
3. On 9<sup>th</sup> March 2022 all parties were written to with the date for the Case Management Discussion (“CMD”) of 29<sup>th</sup> April 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 30<sup>th</sup> March 2022.
  4. On 11<sup>th</sup> March 2022, sheriff officers served the letter with notice of the hearing date and documentation upon both of the Respondent by letter box service. This was evidenced by Certificate of Intimation dated 11<sup>th</sup> March 2022.

#### The Case Management Discussion

5. A CMD was held 29<sup>th</sup> April 2022 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the hearing.
6. The Applicant explained that his intention is to sell the Property to enable him to have a deposit to buy another property. He only owns one property which is this one. He had told the Respondent when he moved in that it would be a short to medium term let. He has amicable relationship with the Respondent. They correspond mostly by WhatsApp. He had told the Respondent by WhatsApp prior to serving the Notice to Leave. He then served the Notice to Leave by email on 15<sup>th</sup> March 2021. He last spoke to the Respondent in January 2022. The Respondent told him that he was looking to find a suitable council house by needed to have the eviction confirmed.
7. The Applicant stated that he had looked on the Scottish Government website when drafting the Notice to Leave. He had put in it all that had been said on that website albeit he had not used their specific form. The Applicant motioned that the form that he had taken was not substantially different and the meaning was clear to the Respondent.
8. The Applicant stated that the Respondent lives on his own. He is not clear about his employment status. The Applicant postponed lodging the application with the Housing and Property Chamber as he believed that the Respondent had lost his job during the pandemic so allowed the Applicant extra time until January 2022 to find alternative accommodation. A potential buyer put in an offer for the Property but withdrew the offer as they require entry before the end of the judicial process. The Applicant also noted that he has let out the Property

for far beneath the market value as the Applicant is a friend of a friend. Due to the cost of living this low level of rent is putting financial pressure on him.

9. The Tribunal was satisfied that it was reasonable to grant an order for eviction and that there were no issues of reasonableness.

#### Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 13<sup>th</sup> May 2019.
11. The rent charge for the tenancy is £340 per month. The rent payments are due to be paid on 28<sup>th</sup> day of each month.
12. The Applicant has instructed an estate agent to sell the Property and a surveyor to conduct a Home Report Survey.
13. The Applicant was not able to sell the Property to a potential purchaser due to the Respondent remaining in the Property.
14. The Notice to Leave is not in the correct form but has all the information contained within it. Section 21 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies in that any material differences do not affect the effect of the form and it is not misleading.

#### Decision

15. The Tribunal found that the Notice to Leave was competent. The Tribunal found that the Applicant was entitled to be granted an order for repossession of the Property.

#### **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.**

Gabrielle Miller

29th April 2022

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**Legal Member/Chair**

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**Date**