

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/2827

Re: Property at B8, South Victoria Dock Road, Dundee, DD1 3AL (“the Property”)

The Parties:

**Mr Douglas John Hogg and Mrs Kathleen Hogg, Abescraig, Main Street, Gauldry, Newport-on-Tay, Fife, DD6 8RP
 (“the Applicants”)**

**Friends Legal, The Centrum Building, 38 Queen Street, Glasgow, G1 3DX
 (“the Applicants’ Representative”)**

**Mr Craig Johnston and Ms Linnea Franssen, B8, South Victoria Dock Road, Dundee, DD1 3AL
 (“the Respondents”)**

**Myles, Muir, Laverty, Solicitors, Meadowplace Building, Bell Street, Dundee, DD1 1EJ
 (“the Respondents’ Representative”)**

Tribunal Members:

**Susanne L. M. Tanner Q.C. (Legal Member)
Angus Lamont (Ordinary Member)**

Decision (in absence of the Respondents)

(i) The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied that Ground 1 in Schedule 3, Part 3 to the 2016 Act was established by the Applicants, in that the Applicants are entitled to and intend to sell the Property for market value or at least put it up for sale within three

months of the Respondents ceasing to occupy it; and made an order for the Respondents' eviction from the Property.

(ii) The tribunal was not satisfied that Ground 12 in Schedule 3, Part 3 of the 2016 Act was established by the Applicants in that on the date of the hearing on 17 June 2019 the Respondents had not been in rent arrears for three or more consecutive months.

(iii) The decision of the tribunal was unanimous.

Reasons

1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 26 November 2018 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules") ("the Application").

1.2. In the Application, the Applicant sought the Respondents' eviction from the Property in terms of Section 51 of the 2016 Act under Ground 1 of the 2016 Act, namely that the Applicants are entitled to and intend to sell the Property for market value or at least put it up for sale within three months of the Respondents' seeking to occupy it.

1.3. On 21 February 2019 the Applicant's Representative submitted an amendment to the Application to add an additional ground of eviction in terms of Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondents have been in rent arrears for three or more consecutive months.

1.4. The Applicant lodged with the Application:

1.4.1. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 6 July 2018;

1.4.2. a copy of the Notice to Leave to the Respondents which bears to be dated 14 July 2018; together with proof of service by email dated 14 September 2019;

1.4.3. A copy Estate Agency Agreement between the Applicants and Yourmove for the sale of the Property 15 October 2018;

1.4.4. Section 11 notice sent to the local authority.

1.5. The Application was accepted for determination by a tribunal on 19 November 2019. Both parties were notified by letters dated 5 December 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1400h on 7 January 2019 at Dundee Carers' Centre. The Respondent was invited to make written representations in response to the Application. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The CMD was postponed to 31 January 2019.

1.6. A Case Management Discussion ("CMD") took place on 31 January. The Respondents were represented by Shelter at that time.

1.7. The hearing commenced on 18 March 2019. The hearing was adjourned to 13 May 2019. The hearing was further adjourned to 17 June 2019. The Respondents were represented by Shelter throughout the hearings. Both parties lodged bundles of documents which were referred to during the hearings.

1.8. On 28 May 2019 the Respondents instructed Myles, Muir Laverty as their Representative in place of Shelter.

1.9. On 12 June 2019 the Respondent's legal Representative informed the tribunal that the Respondents were withdrawing their defence and consenting to the eviction order being granted.

2. Hearing: 17 June 2019 at 1000h at Dundee Carers Centre

2.1. Ms Cameron from the Applicants' representative attended with the second Applicant, Mrs Kathleen Hogg, with her daughter Lisa Hogg as a supporter.

2.2. The Respondents and their legal Representative did not attend. Ms Cameron stated that she had sent an email to the Respondents' Representative on the morning of the hearing advising that she was intending to come to the hearing on 17 June and had not received a reply indicating whether Mr Lawson intended to attend given the withdrawal of the defence to the Application. The hearing proceeded in the absence of the Respondents as the tribunal was

satisfied in terms of Rule 29 that the Respondents and their Representative had been given notice of the hearing. The tribunal proceeded with the Application upon the previous written and oral representations of both parties, including the Respondents' Representative's intimation of withdrawal of the Respondents' defence to the eviction Application and the Applicants' and Applicants' Representatives' oral submissions on 17 June 2019.

- 2.3. Ms Cameron stated that she had been in discussions with the Respondents' solicitor and that a settlement agreement had been reached. Part of the agreement was that the Respondents would withdraw the defence to the eviction application and consent to an eviction order being granted under Ground 1 of Schedule 3 of the 2016 Act. Ms Cameron stated that the rent has been paid up to date and there are no rent arrears. Part of the Agreement is that the Respondents will not pay rent from now until they move out but they have paid up to date. Ground 12 is no longer being relied upon.
- 2.4. The Applicants have undertaken as part of the settlement agreement not to enforce any eviction order until 1 September. If the Respondents have not moved out by 31 August 2019. Ms Cameron stated that the Property will be put up for sale within three months of 1 September 2019.
- 2.5. Ms Cameron stated that it has been agreed between the parties that the Letting Agent applications will be withdrawn. Essentially no further action will be taken by either party. There will be no disability discrimination claim. The agreement is encompassing everything to do with the parties' relationship.
- 2.6. Ms Cameron stated that the Home Report dated 2 November 2018 has to be refreshed because it is more than three months old. The Applicant stated that she will no longer be using YourMove for the sale as her daughter Lisa Hogg is no longer working there. She stated that the whole tribunal procedure has caused difficulties with Lisa and her job. Because Lisa Hogg has left YourMove, the firm have said that there is not a fee if the Applicants want to use somebody else. Mrs Hogg confirmed that steps will not be taken until the Respondents have moved out. The proposed timescale will be that the Applicants will get into the Property on 1 September 2019 with the intention of getting the Home Report refreshed. Access prior to 31 August 2019 is not part of the settlement agreement.

3. The tribunal makes the following findings-in-fact:

- 3.1. The Applicants have been the registered Proprietors of the Property since 20 February 2007.

- 3.2. There is a Private Residential Tenancy between the Applicants and the Respondents for the Property dated 6 July 2018.
- 3.3. The start date for the tenancy was 7 July 2018.
- 3.4. The rent is £800 per calendar month payable on 7th of each month.
- 3.5. As at 17 June 2019 there were no rent arrears.
- 3.6. The Notice to Leave which was served on the Respondents includes notice that the ground upon which eviction is sought is Ground 1 of Schedule 3 of the 2016 Act.
- 3.7. The Notice to Leave was sent to the Respondents by email by the Applicants' daughter Lisa Hogg on 14 September 2019.
- 3.8. The Applicants' mortgage for the Property came to an end on 28 February 2019 but there is an agreement between the Applicants and the lender to renew it month by month until the Property is marketed and sold.
- 3.9. An agreement was entered into on 15 October 2018 between the Applicants and YourMove estate agents to market the Property for sale for an estimated asking price of £165,000.
- 3.10. The Applicants' daughter was employed by YourMove at the time that the agreement was entered into between the Applicants and YourMove as a result of which the Applicants were quoted preferential rates.
- 3.11. A Single Survey was carried out on 2 November 2018 in which the Property was valued at £170,000.
- 3.12. In or about May 2019, the Applicants' daughter left her job with YourMove.
- 3.13. The Applicants and Respondents through, their legal Representatives, have entered into an agreement in which the Respondents have withdrawn their defence to the Application for the Respondents' eviction.
- 3.14. The Applicants have agreed not to enforce any order for eviction until 1 September 2019.

3.15. The Applicants intend to market the Property for sale as soon as practicable after 1 September 2019, at least within three months of the Respondents ceasing to occupy the Property.

3.16. The Home Report will require to be refreshed as it is more than three months old.

3.17. The Applicants intend to instruct another firm of estate agents to market the Property within three months of the Respondents ceasing to occupy it as their daughter no longer works for the firm with which they previously entered into an agreement.

4. Findings in fact and law

4.1. Because the tribunal is satisfied that the facts required in para 1(2) of Schedule 1 to the 2016 Act have been established, namely that the Applicants are entitled to sell the let Property and intend to sell the Property for market value or at least put it up for sale within three months of the Respondents ceasing to occupy the Property the tribunal must find that Ground 1 applies and make an order for the Respondents' eviction from 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.

Susanne Tanner

17 June 2019

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**