



**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/22/3415**

**Re: Property at 32/19 Peffer Bank, Edinburgh, EH16 4FG (“the Property”)**

**Parties:**

**Mr Anacreon Barnard, PO Box 111, Somerset West, 7129, South Africa (“the Applicant”)**

**Mr Louis McKenna, 32/19 Peffer Bank, Edinburgh, EH16 4FG (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and David Godfrey (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

By application, received on 16 September 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property.

The application was accompanied by copies of a Private Residential Tenancy between the Parties commencing on 16 September 2021 at a rent of £825 per month, and a Notice to Leave, dated 26 May 2022, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 22 August 2022, with a certificate of service of the Notice by sheriff officer on 27 May 2022.

On 15 February 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 8 March 2023.

On 8 March 2023, the Respondent emailed the Tribunal. He said that he had applied for the Property with an agreement of a long-term let. He had invested over £1,300 in the Property on made-to-measure blinds, but 6-8 months into the tenancy, the letting agents had told him that the Applicant wanted the Property back. They stated that he had been a good tenant and that they would assist in finding him a new property, but they had later denied this and had become “outright difficult”. The Respondent said that he had been searching for properties but had so far had no luck. The deposit and rent for properties were quite high and he was having difficulty in making ends meet. He was seeking more time and compensation for the cost of the blinds he had fitted.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 23 March 2023. The Applicant was represented by Ms Kelly Gibson of Ballantynes, Chartered Surveyors, Estate Agents & Lettings, Edinburgh. The Respondent was not present or represented.

Ms Gibson told the Tribunal that the reason for the Applicant wishing to sell the Property is that he no longer wants to be a landlord, due to mortgage costs and rent restrictions. He lives and works in South Africa, has another flat in the same Development and intends to sell both properties. The other flat had been left in a poor state by outgoing tenants and was having to be refurbished before being put on the market. They deal with the lettings of 40-50 flats in the development and had emailed the Respondent in October 2022 to invite him to view another flat in the same block which had just come up for rent, as they like to give first option to good tenants within the Development before going to the wider market. He had not responded to that email or to emails of 3, 18 and 25 November 2022, asking him to contact them. Ms Gibson stressed that she refuted the allegations made by the Respondent that they had not been helpful and referred again to the trail of emails trying to get alternative accommodation for him. The Respondent occupies the Property on his own, so there are no dependants living with him.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that

intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

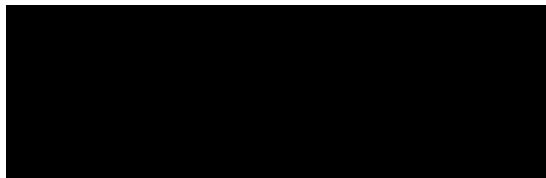
The Tribunal was satisfied that the requirements of Ground 1 in respect of service of the Notice to Leave had been complied with and that the Applicant intends to sell the Property. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of those facts.

The Tribunal noted the reasons given by the Applicant for wishing to sell the Property, namely that he wishes to exit the market on financial grounds, given current levels of mortgage costs and the rent he is receiving. The Tribunal accepted the explanation that, whilst the Applicant's other flat is not yet on the market, the only reason for that is that it has had to be refurbished following the departure of the last tenant. The Respondent had not been present or represented at the Case Management Discussion to provide any information as to why it would not be reasonable to issue an Eviction Order, so the Tribunal could only consider his written representations. It also appeared to the Tribunal that the Applicant's letting agents had gone to considerable lengths, without success, to engage with the Respondent with a view to finding him alternative accommodation in the same Development, including offering him a priority viewing of another flat in the same block.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order.

### **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.**



**Legal Member/Chair**

**23 March 2023**

**Date**