



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/21/2605

Re: Property at 20 Backdean Road, Danderhall, EH22 1RE (“the Property”)

Parties:

Mr Gary Stewart, 34 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Applicant”)

Miss Amie Westgarth, 20 Backdean Road, Danderhall, EH22 1RE (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 21 October 2021.
2. The following documents were lodged to support the application prior to the Case Management Discussion:
 - a. Copy Private Residential Tenancy (PRT) commencing 1 June 2019 for the property
 - b. Notice to Leave dated 8 July 2021 with time stamped photographs of same and the envelope it was delivered in
 - c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 19 October 2021

- d. Affidavit regarding the application of ground 4 and further information dated 20 October 2021
 - e. text exchange of 8 July 2021 between the parties
 - f. Notice to Leave copy dated 8 October 2021
3. The Case Management Discussion (CMD) was scheduled for 21 February 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 14 January 2022. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 4. No representations from the Respondent were received by the Tribunal.
 5. The case documents are referred to for their terms and held to be incorporated herein.

B: The Case Management Discussion:

1. The CMD took place on 21 February 2022 by telephone conference call.
2. The Applicant participated. The Respondent did not participate.
3. The Applicant explained that he had lived in the property until he decided to move in with his partner in 2019 into a rented property. He knew the mother of the Respondent vaguely from the local neighbourhood and was persuaded to rent his own property to her and her then one child. Since then the Respondent had two further children. He and his partner wish to move back into his own property as they wish to improve the property and live in a place where they can make alterations and decorate the property to their liking. The daughter of the Applicant's partner is envisaged to also move in with them. She is 16.
4. The Applicant explained the circumstances of the two Notice to Leave documents with differing dates. He stated this was the first time he had to deal with giving notice and he had printed off several copies of the form and filled them in, being unsure which dates to enter under part 4. He then worked out that part 4 had to be completed by stating the day after the end date of the notice period in the first blank in part 4 and the date of the actual notice on the date line. He had completed the form and taken time stamped photographs of the form he hand delivered to the Respondent on 8 July 2021. He had then messaged the Respondent to give her the Notice to Leave in person as he wished to ensure he could make sure she did receive it and also to personally explain his situation to her when he did meet up with her rather than just post such news through the letterbox. The text messages show the arranging of the meeting. He had attended the property on 8 July 2021 at about 15:00 and hand delivered the notice to the Respondent in the presence of the Respondent's boyfriend. When he sent in the application to the Tribunal he had erroneously used one of the other wrongly completed copies. He asked for this to be disregarded as he had provided the photographs of the original Notice to Leave which was personally served.
5. He further explained with regard to the issue of reasonableness that the Respondent had then stopped paying rent and he was now left with arrears from the rent in August and September 2021 and of last month because although he had then applied for direct payments of Universal Credit for the property, this had stopped last month. He was now effectively paying rent for the property he lives in with his partner and a mortgage and not receiving any payments from the

Respondent for renting his property. He and his partner wish to move back into his own property as this would give them the opportunity to improve the property and to decorate and work with it as they see fit, which then cannot do in the rented property. He had lived there for a long period before he rented it to the Respondent and likes the area and the house. He and his partner intend to occupy the property long term as their residence.

6. He further explained that the property is a semi detached house with 2 bedrooms. The Respondent had told him that she was looking for a larger property as she now had 3 children and the property was too small for her. She had not contacted him at all after the Notice to Leave had been served and had not replied to his efforts to contact her on 7 February 2022 to discuss the application. He had not heard from her at all. He was also not sure if she was still living in the property because she had not paid rent and had not reacted to his contact attempts.

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 June 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. On 8 July 2021 the Applicant served a Notice to Leave on the basis of ground 4 of schedule 3 of the 2016 Act on the Respondent by delivering this personally to her at the property.
5. The Notice to Leave states as the date when proceedings can be raised the date of 8 October 2021 and gives information about why the ground would apply.
6. The notice required under S 56 of the Act was issued to the local authority on 19 October 2021
7. The rent for August and September 2021 was not paid by the Respondent and further arrears have accrued.
8. The Applicant was resident in the property for years before he moved in with his partner into rented accommodation.
9. The Applicant and his partner now intend to move into the property and decorate and improve it to their own plans, including installing a better boiler.
10. The property is a two bedroom semi detached property.
11. The Applicant has to pay rent for the property he currently lives in and a mortgage for the property the Respondent has rented from him.
12. The Respondent has refused to engage in attempts of the Applicant to discuss the situation. She has, however, stated that she would wish to move into a larger property due to her now having 3 children.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
 - (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,
- a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

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.

Grounds under Schedule 3 of the 2016 Act

Landlord intends to live in property

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if

a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(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.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the Applicant's affidavit, which formed part of the case papers served on the Respondent. The Tribunal also accepted that the mortgage payments were indicated in the case papers in the copy title deeds which detail a standard security over the property in favour of the TSB Bank. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The documents lodged and the Direction are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD.

4. In terms of S 54 of the Act a 3 months notice period applied. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 19 October 2021 and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 4 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. The Applicant has given a detailed and credible account of his reasons why he is intending to move back into the property and credibly confirmed that he and his partner wish to then live in the property as their principal residence with his partner's daughter intending to live there, too, in the future. He has close links to the property and to the neighbourhood, having lived there for years prior to renting out the property. The property is not excessively large for the size of family he described would be moving into it. It does, however, appear to have become too small for the Respondent's growing family. The Applicant further explained that at present he has to pay rent and a mortgage for the property whilst no longer receiving rent regularly from the Respondent. This situation cannot be maintained by the Applicant in the longer term. The Applicant has advised the local authority of the circumstances of the Respondent in the notice sent by him in October 2021. The Respondent thus can verify her need to be re-housed in an appropriate property to the local authority.

6. The landlord in this case has been both patient and pro-active in trying to manage the situation and in light of the complete failure of the Respondent to engage in

process, the Tribunal on balance considered that it is reasonable in all the circumstances to grant the eviction order.

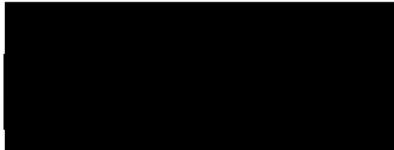
7. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 24 March 2022.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 4 of Schedule 3 of the 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.



Legal Member/Chair

21 February 2022

Date