

**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/21/3172

Re: Property at Flat 1/2, 201 Castlemilk Drive, Glasgow, G45 9JU (“the Property”)

Parties:

Mr Stephen Bowley, 157 Poole Lane, Bournemouth, BH11 9EA (“the Applicant”)

**Mr Kenneth Brown, Miss Amy Byrne aka Jaza Byrne, 2/2 210 Tormusk Road,
Glasgow, G45 0DJ; Flat 3/2, 114 Seagate, Dundee, DD1 2ET (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondents.

Background

- 1 The Applicants applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Copy Tenancy Agreements between the parties dated 28th January 2015 and 26th January 2019;
 - (ii) Rent Statement;
 - (iii) Copy Notice to Leave to the First Respondent dated 18th February 2021 with recorded delivery receipt;

- (iv) Copy Notice to Leave to the Second Respondent dated 18th February 2021 with recorded delivery receipt;
 - (v) Copy Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Glasgow City Council with covering email;
 - (vi) Copy Terms of Business and Fee Estimate from Conveyancing Direct Solicitors relating to the sale of the property;
 - (vii) Copy Sheriff Officer trace report dated 9 November 2021 in relation to the First Respondent; and
 - (viii) Copy Notice to Leave to the First Respondent dated 25th November 2021 and proof of service dated 25th November 2021.
- 2 The Tribunal was also in receipt of the Land Certificate for the property which confirmed the registered owner as the Applicant.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 11 March 2022, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to both Respondents by Sheriff Officers.
- 4 The Second Respondent subsequently submitted a written response to the Tribunal, which was received on 8 March 2022. In summary the Second Respondent outlined the history of the tenancy and confirmed that the First Respondent had vacated in August 2019. She had since struggled to obtain a tenancy agreement in her own name in order to claim benefits and this had caused financial difficulties. The Second Respondent confirmed that she had vacated the property in September 2020 and had moved to Dundee. She had returned the keys and her notice to leave to the Applicant's letting agent at that time.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 11 March 2022. The Applicant was represented by Mrs Claire Young, Solicitor from TC Young LLP. The Second Respondent was present. The First Respondent was not in attendance. Having noted that the First Respondent had been served with appropriate notice of the Case Management Discussion the Tribunal determined to proceed in his absence.

- 6 The Legal Member explained the purpose of the Case Management Discussion and asked Mrs Mullen and the Second Respondent to address the Tribunal on their respective positions regarding the application.
- 7 Mrs Mullen confirmed that the Applicant sought an order for repossession on the basis of his intent to sell the property. She made reference to the Terms of Business lodged with the application which was evidence of said intention. She noted that service of the initial Notice to Leave on the First Respondent had been unsuccessful and accordingly, following a successful trace by Sheriff Officers, it had been served upon him at his current address. This did mean that the period of notice in said Notice to Leave had not yet expired and would not do so until May 2022. However Mrs Mullen noted that the First Respondent was no longer residing in the property and accordingly she submitted it would be reasonable for the Tribunal to exercise its discretion in order to consider the application. Mrs Mullen further explained that the parties had previously entered into a short assured tenancy agreement in 2015, however that had been superseded by a new tenancy agreement signed in 2019 which constituted a private residential tenancy.
- 8 Mrs Mullen then turned to the question of the reasonableness of making the order sought. She acknowledged that both Respondents were no longer residing at the property, this had been confirmed by the Second Respondent in her submissions. On that basis she submitted that it would be reasonable to grant the eviction order. She asked the Tribunal to dispense with the charge and the Form 4 notice on the basis that it would not be prejudicial to the Respondents.
- 9 The Second Respondent then confirmed to the Tribunal that she was no longer residing in the property and would have no objection to the order being granted.

Relevant Legislation

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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 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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

- (i) 28 days after it begins if subsection (3) applies,*
- (ii) three months after it begins if subsection (3A) applies,*
- (iii) six months after it begins if neither subsection (3) nor (3A) applies.*

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

- (i) 28 days after it begins if subsection (3B) applies,*
- (ii) three months after it begins if subsection (3C) applies,*
- (iii) six months after it begins if neither subsection (3B) nor (3C) applies*

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (i) that the landlord intends to live in the let property, [ground 4]*
- (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
- (iii) that the tenant has a relevant conviction, [ground 13]*
- (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*
- (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*
- (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
- (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

(b) the only eviction grounds stated in the notice to leave are—

- (i) the eviction ground mentioned in subsection (3), and*
- (ii) an eviction ground, or grounds, mentioned in paragraph (a)*

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
- (b) that the tenant has a relevant conviction, [ground 13]*
- (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 1

1 Landlord intends to sell

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

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

(a) is entitled to sell the let property, and

(b) 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

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

Findings in Fact and Law

- 11 The parties entered into a Private Residential Tenancy Agreement dated 24 June 2019.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 19 February 2021 the Applicant delivered a Notice to Leave to the Second Respondent by recorded delivery mail. The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 21 August 2021.
- 14 On 26th November 2021 the Applicant delivered a Notice to Leave to the First Respondent by Sheriff Officers. The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 29th May 2022.
- 15 The Notices to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 The Respondents are both now residing in alternative accommodation.
- 17 The Applicant is the registered owner of the property.


- 18 The Applicant therefore has title to sell the property.
- 19 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy, in terms of the termination of the tenancy between the parties.
- 20 It is reasonable to make the order sought by the Applicant.
- 21 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 22 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The First Respondent had been served with the application paperwork and had chosen not to participate in the proceedings. On that basis the Tribunal was content to determine the application in his absence.
- 23 The application before the Tribunal was accompanied by a Notice to Leave for each Respondent which confirmed the Applicants' intention to rely upon ground 1 of Schedule 3 of the 2016 Act. Whilst the period of notice in the Notice to Leave served on the First Respondent had not yet expired, the Tribunal accepted that he was no longer residing in the property and therefore exercised its discretion under section 52(4) of the Act to entertain the application. The Tribunal considered there would be no prejudice to the First Respondent in doing so.
- 24 The Tribunal was further satisfied on the basis of its findings in fact that the Applicant has title to sell the property and intend to do so within three months of the tenancy having ceased. The Tribunal further noted that both Respondents had vacated the property and were now residing in alternative accommodation. On that basis the Tribunal considered it would be reasonable to grant an eviction order. The Second Respondent had confirmed that she would have no objection to this course of action.
- 25 Finally the Tribunal was content to dispense with the requirement to serve a charge for removal on the Respondents and Form 4 notice, again on the basis that neither were continuing to reside in the property.
- 26 The Tribunal therefore determined to make an eviction order. The decision of the Tribunal was unanimous.

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.

 **Ruth O'Hare**

Legal Member/Chair

15 March 2022
Date