



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 of the Private**

Chamber Ref: FTS/HPC/EV/23/0029

Re: Property at 9 Cleuch Road, North Middelton, Midlothian, EH23 4RB (“the Property”)

Parties:

Mr Matthew Gardner, Calle Fuerte 4, Chite 18656, Granada, Spain (“the Applicant”)

Ms Jessica Wycherley, 9 Cleuch Road, North Middelton, Midlothian, EH23 4RB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an eviction order against the Respondent in favour of the Applicant

Background

1 By application to the Tribunal dated 5 January 2023 the Applicant sought an eviction order against the Respondent under ground 4 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-

- (i) Copy Private Residential Tenancy Agreement between the parties;
- (ii) Notice to Leave dated 12 September 2022, confirming that proceedings would not be raised any earlier than 15 December 2022 and citing ground 4 of schedule 3 of the 2016 Act together with proof of service;
- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Midlothian Council together with proof of service; and

- (iv) Title sheet for the property under reference MID97507 confirming the Applicant to be the registered owner.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 26th April 2023.
- 3 A copy of the application paperwork together with the date and time of the Case Management Discussion with instructions for joining the teleconference was served upon the Respondent by Sheriff Officers.
- 4 The Applicant subsequently submitted affidavits from both the Applicant and his mother in support of an amendment to include ground 4A.

Case Management Discussion

- 5 The Case Management Discussion took place on 26 April 2023. The Applicant was present and represented by Mr Livingstone of Landlord Specialist Services Scotland. The Respondent was not in attendance. The Tribunal noted that she had been served with the application paperwork with the date and time of the Case Management Discussion and instructions for joining the teleconference and therefore determined to proceed in her absence.
- 6 The Tribunal explained that the application had been brought under ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, however it was noted that the Applicant was seeking to amend the application to include ground 4A. Mr Livingstone was therefore invited to make submissions on this point.
- 7 Mr Livingstone confirmed that the Applicant wished an amendment to the application to introduce ground 4A. He confirmed that he had visited the Respondent towards the end of 2022 and she was seeking rehousing. The Respondent resided with a partner, one was in employment and the other a full time student. There were children within the property all under the age of 15. The Respondent had been generally compliant with the request by the Applicant to return to live in the property to alleviate his financial circumstances. Mr Livingstone made reference to the affidavits submitted by the Applicant in this regard. There had been a delay however in the Respondent vacating the property. The Applicant confirmed that he had been messaging her on Whataspp the day prior to the Case Management Discussion and she stated that she had another property but had not yet confirmed a date for removal. Her new landlord had asked for the 12th May 2023 but she did not want to vacate until the 18th May. The Applicant stated that he didn't know how credible the information from the Respondent was. The rent was up to date.
- 8 The Applicant then addressed the Tribunal. He explained that he had moved to Spain with his wife three years ago and rented out the property. Due to the pandemic and increase in costs they could not longer afford to stay there. His

wife had her own business but it wasn't going as well as expected. She was not bringing in enough income to support them and their two children. In response to questions from the Tribunal the Applicant confirmed his intention in the short term was to move back into the property, however he couldn't say what would happen in the long term. He confirmed that the property had been his home from 2016 until 2019. He and his family were currently occupying his mothers house in Spain but she wanted to sell it. Mr Livingstone confirmed that the Respondent had advised him that she had sought assistance from the Council and had been advised that until such time as an eviction order was in place her application would not be progressed due to the size of the waiting list. He had given her advice on how to apply through other routes.

Relevant Legislation

- 9 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 4A

It is an eviction ground that the landlord intends to live in the let property to alleviate financial hardship.

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

(1) applies if—

(a) the landlord—

(i) is suffering financial hardship, and

(ii) intends to alleviate that hardship by occupying 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.

(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)(a)(ii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) an affidavit stating that the landlord has that intention.

Findings in Fact and Law

- 10 The parties entered into a Private Residential Tenancy Agreement dated 19 September 2019.
- 11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 12 On 12 September 2022 the Applicant sent a Notice to Leave to the Respondent.
- 13 The Notice to Leave cited ground 4 and confirmed that proceedings would not be raised any earlier than 15 December 2022.
- 14 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 15 The Applicant is the registered owner of the property.
- 16 The Applicant is suffering financial hardship and intends to return to live in the property in order to alleviate said financial hardship. The Applicant produced affidavits from himself and his mother to support this.
- 17 The Respondent is actively seeking alternative accommodation.
- 18 It is reasonable to make the order sought by the Applicant.
- 19 The provisions of ground 4A of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 20 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. It was clear that there were no matters in dispute that would require a hearing to be fixed. The Respondent had been given the opportunity to attend, and to make written representations, but had chosen not to do so.
- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 4 of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act. The Tribunal was further satisfied that it could allow an amendment to the application to introduce ground 4A.
- 22 The Tribunal accepted, based on the affidavits produced and the verbal submissions at the Case Management Discussion, that the Applicant was suffering financial hardship both in terms of the cost of living and the consequence of his mother requiring to sell the property he was currently occupying. The Tribunal also accepted that the Respondent had been actively seeking alternative accommodation and had likely found another property based on the information she had provided to the Applicant the day prior to the Case Management Discussion. On that basis the Tribunal concluded that ground 4A had been met and it was reasonable to make an eviction order.
- 23 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

26 April 2023

Legal Member/Chair

Date