



**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/23/2713**

**Re: Property at Flat 1/1 163 Parklands Oval, Glasgow, G53 7UF (“the Property”)**

**Parties:**

**Mr David Gillan, 58 Park Gate, Park Mains, Erskine, PA8 7HQ (“the Applicant”)**

**Ms Nosheen Arshad, Flat 1/1 163 Parklands Oval, Glasgow, G53 7UF (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and John Blackwood (Ordinary Member)**

**Decision**

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

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent under ground 1A 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 dated 30 July 2021;
  - (ii) Notice to Leave dated 25 April 2023, confirming that proceedings would not be raised any earlier than 21 July 2023 and proof of service on the Respondent by recorded delivery dated 26 April 2023; and

- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Glasgow City Council together with proof of service by email dated 9 August 2023.
  - (iv) Copy Letter from Provincial Floors, the Applicant's employer, confirming the Applicant's reduction in salary due to restructure of company financing;
  - (v) Profit and Loss projection for the Applicant in respect of the property; and
  - (vi) Copy email correspondence between the Applicant and the Respondent.
- 2 The Tribunal was also in receipt of the title sheet ANG57714 for the property which confirmed the Applicant to be the registered owner.
  - 3 By Notice of Acceptance of Application dated 28 August 2023 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 and 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 On 15 November 2023 the Tribunal received an email from the Applicant's representative, The Eviction Helpline. The Applicant's representative confirmed that they had been informed by the Applicant's letting agent that the Respondent had accepted the offer of another property. The Applicant's representative provided an email from the Respondent to the Applicant's letting agent dated 13 November 2023. Said email confirmed that the Respondent had signed a tenancy agreement for the new property and would receive the keys on 24 November 2023. The Respondent stated in the email that she would return the keys for the Applicant's property on 28 November 2023.
  - 5 On 17 November 2023 the Tribunal was contacted by Ms Holly Sloey from Govan Law Centre who confirmed that she had been instructed to attend the Case Management Discussion on behalf of the Respondent.

### **Case Management Discussion**

- 6 The Applicant was represented at the Case Management Discussion by Mr Mahmood Ulla from The Eviction Helpline. The Respondent was represented by Ms Holly Sloey.
- 7 The Tribunal explained that the application had been brought under ground 1A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and explained the legal test to be met. The Tribunal then asked the parties to address the Tribunal on the application.
- 8 Mr Ulla explained that the Applicant required to sell the property due to ill health and to tie up loose ends. He was seriously ill. As soon as he secured vacant possession of the property he intended to put it on the market. Mr Ulla made reference to the documents submitted with the application which highlighted the

financial hardship the Applicant was experiencing, including a reduction in salary and financial loss with regard to the letting of the property. Mr Ulla explained that the Applicant had a number of debts he wanted to clear due to his terminal illness, although Mr Ulla was unable to give specifics as to the exact nature of these.

- 9 Ms Sloey advised that the Respondent did not oppose the making of an eviction order. She had obtained alternative accommodation which she was due to move into at the end of the month. Ms Sloey had no further comment regarding the terms of the application on that basis.

## **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) It is an eviction ground that the landlord intends to sell 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 entitled to sell the let property,*

- (ii) is suffering financial hardship, and*
- (iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
- (b) the Tribunal is satisfied that it is reasonable to issue an eviction order.*
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(iii) 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) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
- (e) 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, and*
- (f) an affidavit stating that the landlord has that intention.*

## **Findings in Fact**

- 11 The parties entered into a Tenancy Agreement in respect of the property dated 30 July 2021, which commenced on 1 August 2021.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 26 April 2023 the Respondent was served with a Notice to Leave by Sheriff Officers. The Notice to Leave cited ground 1A and confirmed that proceedings would not be raised any earlier than 21 July 2023.
- 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 has title to sell the property, being the registered owner.
- 16 The Applicant is suffering financial hardship. The Applicant's salary has been reduced by £15,000 per annum. The Applicant is currently making a loss with regard to the lease of the property.

- 17 The Applicant has terminal cancer and requires to settle his financial affairs in early course. The Applicant has personal debts that he wishes to clear through the sale of the property.
- 18 The Applicant intends to market the property for sale within three months of the Respondents ceasing to occupy in order to alleviate said financial hardship.
- 19 The Respondent has signed a tenancy agreement for a new property. The Respondent's new tenancy is due to commence on 24 November 2023. The Respondent has advised the Applicant's letting agent that she will return the keys for the Applicant's property on 28 November 2023.

### **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. Ms Sloey had confirmed that the Respondent was not disputing the application.
- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1A 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.
- 22 The Tribunal was further satisfied on the basis of its findings in fact that the Applicant had title to sell the property and intended to do so within three months of the Respondent having vacated. The Tribunal accepted that his reason for doing so was ongoing financial hardship caused by a reduction in salary, increased property costs and his medical condition which necessitated the settlement of his financial affairs through payment of outstanding debts. The Tribunal therefore had to consider whether it was reasonable in the circumstances of the case to make the order, which required the Tribunal to balance the various facts and circumstances of the case in order to exercise its judicial discretion in this regard.
- 23 The Tribunal was cognisant that the Respondent had sourced alternative accommodation and was in the course of removing from the property by 28 November 2023, having signed a tenancy agreement for a new property. There would therefore be no prejudice to the Respondent in the making of an eviction order. The Tribunal also accepted that the Applicant was suffering from a terminal illness and that the sale of the property would alleviate some of the



stress caused by his present situation. On that basis the Tribunal was satisfied that it would be reasonable in the circumstances of this case to make an eviction order.

- 24 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.**

# R O'Hare

**17 November 2023**

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**Legal Member/Chair**

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**Date**