

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/23/2097

Re: Property at 48 North Seton Park, Port Seton, EH32 0BA (“the Property”)

Parties:

Carole Linda Brownlee, 1 Golf Drive, Prestonpans, East Lothian, EH32 0EF (“the Applicant”)

Jacqueline Carpenter, Martin Carpenter, 48 North Seton Park, Port Seton, EH32 0BA (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 1 May 2022.
2. The application was dated 23 June 2023 and lodged with the Tribunal on 26 June 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, though where eviction was sought under Ground 4A there would be no additional requirements under that Act.
3. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*. It was dated 13 March 2023 and was served upon the Respondents by recorded delivery service that day,

all in accordance with the provisions of the PRT. (There was also evidence of the Notices signed for on 23 March 2023.) The Notice relied upon Grounds 4 and 4A of Schedule 3 Part 1 of the 2016 Act, being respectively that “Your Landlord intends to live in the Let Property” and “Your Landlord intends to live in the Let Property to alleviate financial hardship”. In regard to these grounds, the body of the notice provided information about the Applicant residing in a property which is a local authority property tenanted to her husband, but that her husband is terminally ill and that, due to the Applicant owning the Property, the Applicant has been told by the local authority that she will not have a right to tenure of the matrimonial home on the passing of her husband. (The Applicant will thus be at risk of eviction by the local authority shortly after being bereaved.) The Notice to Leave intimated that an application to the Tribunal would not be made before 8 June 2023.

4. In advance of the case management discussion (“CMD”), we were provided with an email from a Housing Officer of East Lothian Council confirming their interpretation of legislation on succession to tenancies (in specific consideration of the Applicant’s husband’s property being adapted for his use, and of the Applicant’s ownership of the Property), and stating that in consideration of the Council’s interpretation, “it is highly unlikely [that the Applicant]... would succeed to the tenancy of 1 Golf Drive, Port Seton”. A basic income & expenditure table was also provided which showed the Applicant’s household at present having monthly disposal income of less than £200. These papers only reached the Tribunal shortly before the CMD and therefore we were aware that they would not have been seen by the Respondents prior to the CMD.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Lothian Council on 23 June 2023 was included in the application papers.

The Hearing

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 November 2023 at 14:00. We were addressed by Fraser Pennie, solicitor for the Applicant, Russel + Aitken (Falkirk + Alloa), and by the first Respondent.
7. The first Respondent confirmed that she and the second Respondent had separated some months ago, and the second Respondent had moved to a new address during September. She thus represented only herself and did not see that the second Respondent had any further interest in the application. In the circumstances, we were satisfied to proceed on this basis without an appearance from the second Respondent.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. He explained that there had been no change to the local authority’s position and though the Applicant wished to remain at 1 Golf Drive, and did not wish to evict the first Respondent, she was at risk of homelessness shortly after being bereaved. She owned no other properties, and had no

tenancy over any other properties. Her husband was now receiving palliative care and he remained terminally ill. The Applicant's finances were such that, after her husband's passing, her only option (given the position of the local authority) was to reside at the Property and she required to evict the Respondents in anticipation.

9. In regard to the financial information provided, the Applicant's agent was candid in confirming that he did not hold full information as to the background to all the figures. It was unclear to us whether the income included the rent from the Property (though it seemed likely it did, as the rent was £780/month and one of the items making up the monthly income was £780). Further, the Applicant's agent understood that the Applicant was on £250/m Disability Living Allowance but it was unclear whether that featured in the income (and if it did, what made up the rest of the income figures). In regard to expenditure, it did not appear to include the Applicant's husband's local authority rent payment. In all, there was a question as to whether the statement included all income and expenditure for the household, was pro-rated for the Applicant only, or was an untidy mix. The Applicant's agent further lacked information as to the Applicant's predicted income and expenditure after the passing of her husband but he posited that her income would drop as his benefits would cease. The Applicant's agent's submissions, at their most precise, were that the Applicant's disposal income was around the £140/month shown on the statement provided, and it would likely drop when she was bereaved. He submitted that the Applicant did not have the income to obtain a further rented property if she was not able to reside at the Property. Further, she still had £20,000 outstanding on her mortgage for the Property which required financing. (A mortgage payment of £480/month was seen on the income and expenditure statement.)
10. The first Respondent stated that she did not oppose the application. She understood the Applicant's financial and personal position and accepted that the Applicant had been left with no option but to seek to live at the Property once her husband passed away. The first Respondent said that she knew the Applicant and had discussed her position with her personally. As a result, though the first Respondent was privy to discussions during the CMD on the documents recently lodged by the Applicant (and the financial information within them) she declined to have them read out to her at length or to seek a continuation to receive and consider them.
11. The first Respondent stated that she had started to pack but she had been unable to obtain alternative accommodation to date. She had submitted an application for public housing and was of the view that she could not leave the Property voluntarily without being regarded as intentionally homeless, and that her application for housing would be assisted once she held an order for eviction.
12. In regard to her personal circumstances, along with having recently separated, the first Respondent said that she had three children all of whom lived with her full-time (with occasional sleep-overs with the second Respondent at his new

accommodation). The youngest was in a local nursery and the older two in the local primary school. The Property was not specially adapted for their use but she benefited from sources of support within the area, as her eldest child has a medical condition which the local pharmacist and GP are both aware of (and were aware of the care required in any emergency).

13. We confirmed that the Respondent was aware that if we granted an order under Ground 4A, there would be no restriction on the power to eviction in terms of the 2022 Act. She was aware of this, and referred to discussing issues regarding her eviction with the Housing Options officer in the Housing Department. Having discussed matters at some detail, it was clear that the Respondent was still consenting to the order sought, with no variation or suspension.
14. There was no motion for expenses.

Findings in Fact

15. On 13 and 17 April 2022, the Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 1 May 2022 (“the Tenancy”).
16. On or around 13 March 2023, the Applicant’s solicitor drafted Notices to Leave in correct form addressed to each of the Respondents, providing the Respondents with notice, amongst other matters, that the Applicant intended to live in the Property and to do so to alleviate financial hardship.
17. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 8 June 2023.
18. A copy of the Notice to Leave was served on each Respondent by recorded delivery by the Applicant’s solicitor on 13 March 2023.
19. Clause 4 of the Tenancy Agreement provided for notices to be served in hard copy by recorded delivery.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Grounds 4 and 4A of Schedule 3 Part 1 of the 2016 Act, on 18 May 2023.
21. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Lothian Council on 23 June 2023.
22. The Applicant currently resides with her husband at 1 Golf Drive, Port Seton. That property is tenanted to the Applicant’s husband by the local authority.
23. The Applicant’s husband is terminally ill and currently receiving palliative care.

24. The property at 1 Golf Drive is adapted for the needs of the Applicant's husband.
25. The Applicant has enquired with the local authority as to succession to her husband's tenancy at 1 Golf Drive on his passing. She has been told by the local authority that they regard it is "highly unlikely" that she shall succeed due to the local authority's interpretation of legislation, and its consideration of the Applicant's ownership of the Property, and the adaptations of 1 Golf Drive.
26. The Applicant is most concerned that on her husband's passing she shall be soon after be under threat of eviction from 1 Golf Drive.
27. Though the Applicant wishes to reside at 1 Golf Drive, she is aware that the local authority's position is that she shall not be entitled to succeed to the tenancy of that address.
28. Though the Applicant does not wish to force the Respondents to seek new accommodation, she has no other properties available to her in which to reside if required to leave 1 Golf Drive.
29. The Applicant seeks vacant possession of the Property so she may move into it after her husband's passing.
30. The first Respondent resides with her three children at the Property. Her youngest child is in a local nursery. Her two older children are in full time education at the local primary school.
31. The first Respondent is making active attempts to obtain alternative accommodation but has thus far failed to obtain a new tenancy.
32. The second Respondent has obtained alternative accommodation in September 2023 and no longer lives at the Property.
33. The Respondents separated some months ago.
34. The Respondents' eldest child has a medical condition of which the local GP and pharmacy are aware and prepared to treat in the event of a medical emergency.
35. On 18 October 2023, a Sheriff Officer acting for the Tribunal intimated the CMD of 17 November 2023 upon the Respondents.

Reasons for Decision

36. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the

Notice to Leave had been competently drafted and served upon both the Respondents.

37. Ground 4A of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1) *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.*
38. Notwithstanding the lack of full background information on the figures in the income and expenditure statement, that document – when combined with the further submissions and the details in the application regarding the housing issues - constitutes evidence under paragraph (2)(a). The Applicant seeks a permanent home and the Property is, given the local authority's position, her only clear option at present.
39. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(b). Subject to our comments below in the Post-script, it is clear that the Applicant is in a lamentable position. She is soon to be bereaved and will then likely be made homeless (unless she makes another family homeless first). She lacks a financial cushion to obtain another property without succession to the local authority tenancy unless she evicts the Respondents.
40. There was no argument made by the first Respondent against the reasonableness of eviction as, when discussed with her at the CMD, she did not oppose the order. The parties both believed that the first Respondent's application for public housing may be assisted if she were subject to an order for eviction under Ground 4A. In all the circumstances before us, we were

satisfied that Ground 4A was well founded by the Applicant and reasonable to grant, though the severe effect this has on the first Respondent and her children weighed upon us. We comment further in the Post-script on these wider issues.

41. In regard to Ground 4, as Ground 4A is made out, so is Ground 4. Had Ground 4A not been sought, we would have granted eviction (subject to the 2022 Act) under Ground 4. We decline to do so as it is unnecessary.
42. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 4A.

Decision

43. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 4A of Schedule 3 of that Act, in normal terms.

Post-script

44. Given that no defence was laid against the Applicant's basis for seeking to live at the Property, it was not necessary for us to scrutinise whether she is correctly under threat of eviction from 1 Golf Drive. We would say, however, that in our preparation for the CMD, we found the local authority's interpretation of the legislation difficult to follow.
45. We looked no further, however, as it was clear that the Applicant holds a genuine belief that she is at threat of eviction. Even if she is not genuinely at risk of eviction, in order to vindicate her position she would require – during her husband's final days – to enter into a dispute with the local authority. Avoiding placing the Applicant into that position is itself a forceable argument for reasonableness in favour of granting the eviction.
46. Further, had we continued this application for further investigations into the Applicant's succession to the local authority tenancy, nothing would be improved for the parties. The Applicant's life would be in greater upheaval at a very difficult time for her. Further, given the attitude of the local authority to the first Respondent's position, she would be disadvantaged in her quest to obtain rehousing for her family without us issuing an order for eviction. She would be entering the new year with no certainty as to her and her family's future housing.
47. We have thus granted the order which was, in effect, sought by both sides. We are confident that it is correctly made in law, though it is a perverse situation. We would only say that having granted the order, it need not be given effect to by the Applicant if she does now manage to vindicate her position with the local authority and obtain a succession to the tenancy of 1 Golf Drive. She may wish

to make a further attempt at this, given the parties now have the back-up option of proceeding (respectively) with the eviction and a compelling rehousing application. It is clear that this is what both parties want and would avoid two households (suffering different emotional stresses) facing rehousing and upheaval due to the procedural decisions of different parts of the same public sector housing system.

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.

J Conn

17 November 2023

Legal Member/Chair

Date