



**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/24/0647**

**Re: Property at 1/R, 53 Gateside Street, Largs, KA30 9HS (“the Property”)**

**Parties:**

**Bank of Scotland PLC, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)**

**Mr Ian Barbour, 1/R, 53 Gateside Street, Largs, KA30 9HS (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

- 1 By application to the Tribunal dated the Applicant sought an eviction order against the Respondent in respect of the Property under paragraph 2 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Notice to Leave dated 25 September 2023 confirming that proceedings would not be raised any earlier than 21 December 2023 together with certificate of service by Sheriff Officers dated 27 September 2023.
  - (ii) Extract Decree from Kilmarnock Sheriff Court in favour of Bank of Scotland plc against Alistair Mills dated 27 April 2023;
  - (iii) Form BB Notice to the Occupier of Flat 1/R, 53 Gateside Street, Largs, KA30 9HS dated 5 December 2022;

- (iv) Section 11 Notices to North Ayrshire Council together with evidence of service by email; and
  - (v) Copy letter from Applicant's representative to Respondent dated 18 August 2023.
- 2 The Tribunal was also in receipt of the Land Certificate under reference AYR71925 which confirmed that Alistair Mills had granted a standard security over the property in favour of Bank of Scotland plc.
  - 3 By Notice of Acceptance of Application dated 7 March 2024 a 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 and 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 the Respondent by Sheriff Officers.

#### **Case Management Discussion**

- 4 The Applicant was represented at the Case Management Discussion by Ms Katie McDonald of Aberdeen Considine. She was accompanied by Georgia Mullen as an observer. The Respondent was not present. The Tribunal noted that he had been served with the application paperwork which included notification of the date and time of the Case Management Discussion together with instructions for joining the teleconference. The Tribunal therefore determined to proceed in his absence.
- 5 The Tribunal explained the purpose of the Case Management Discussion and asked Ms McDonald for submissions on behalf of the Applicant. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 6 Ms McDonald confirmed that the Applicant was seeking an eviction order. A decree had been granted on 12 April 2023 which entitled the Applicant to recover possession and sell the property. The Applicant was of the view that ample time had been given to the Respondent to vacate. Ms McDonald advised that the Respondent had not been in touch since the Notice to Leave had expired. She believed that he resided in the property with a child who was under the age of 16. In response to questions from the Tribunal Ms McDonald stated that it was standard practice for the Applicant to seek vacant possession in order to proceed with a sale of a property. The value of a property could be significantly affected in the absence of vacant possession. Ms McDonald confirmed that the information the Applicant had regarding the tenancy had been obtained from the Respondent directly during a telephone call. She had followed that up in writing to both the landlord and the Respondent but there had been no response. Ms McDonald advised that there had been attempts to contact the Respondent prior to the issuing of the

Notice to Leave. Letters had been sent to him following receipt of the decree for possession and she had spoken with him by telephone. Since service of the Notice she had attempted to contact the Respondent by email on two occasions to understand his intentions however he had not responded. She had been unable to obtain any further information regarding his personal circumstances, other than the fact that he resided with a child under the age of 16.

## **Relevant Legislation**

- 1 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, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

### **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.*

### **Paragraph 2 of Schedule 3**

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

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

*(a) the let property is subject to a heritable security,*

*(b) the creditor under that security is entitled to sell the property,*

*(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and*

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

### **Findings in Fact and Law**

7 The heritable proprietor of the property is Alistair Mill.

8 The property is subject to a standard security in favour of the Applicant.

9 On 1 August 2020 Alistair Mill granted a tenancy of the property to the Respondent.

- 10 The tenancy between Alistair Mill and the Respondent was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 11 On 12 April 2023 the Applicant obtained a decree for repossession of the property from Kilmarnock Sheriff Court against Alistair Mill following service of a calling-up notice. Said decree entitles the Applicant to recover possession and sell the property.
- 12 On 27 September 2023 the Applicant served a Notice to Leave upon the Respondent by Sheriff Officers. The Notice stated that the ground for repossession was paragraph 2 of schedule 3 of the 2016 Act and that proceedings for repossession would not be raised any earlier than 21 December 2023.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 The Applicant requires vacant possession in order to sell the property. In the absence of vacant possession the value of the property would be significantly affected to the detriment of the Applicant.
- 15 The Applicant has attempted to contact the Respondent by email on two occasions since service of the Notice to Leave. The Respondent has not responded.
- 16 The Respondent resides at the property with a child under the age of 16.

### **Reasons for Decision**

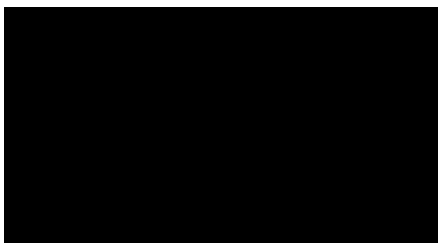
- 17 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondent had not sought to enter the proceedings, nor challenge the evidence submitted by the Applicant.
- 18 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 2 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 19 Based on the documentary evidence submitted by the Applicant the Tribunal concluded that the property was subject to a heritable security in favour of the Applicant, that they had obtained a decree that entitled them to sell the property, and that they required vacant possession in order to do so. The

Tribunal accepted that in the absence of vacant possession the value of the property would be affected to the detriment of the Applicant. The remaining issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances of this particular case to grant an eviction order.

- 20 The Tribunal had limited information regarding the Respondent's circumstances, as a result of his failure to respond to recent attempts at contact by the Applicant and his failure to attend the Case Management Discussion. The Tribunal accepted that he resided in the property with a child. However this did not in the view of the Tribunal outweigh the prejudice to the Applicant in his continued occupation. The Applicant, as the holder of a heritable security over the property, has a right to seek recovery of possession by virtue of the decree granted by Kilmarnock Sheriff Court. Whilst the welfare of the Respondent's child was a concern, the Applicant is entitled to enforce that right. There was insufficient evidence before the Tribunal to persuade it that for the Applicant to do so was unreasonable.
- 21 Accordingly, having weighed up all relevant factors the Tribunal determined that it would be reasonable to grant an eviction order in the particular circumstances of this case.
- 22 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**

**12 June 2024**

**Date**