



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/24/0796

Re: Property at 34 Clarkston Drive, Airdrie, ML6 7AH (“the Property”)

Parties:

Mrs Anne Dalziel, Mr James Dalziel, 93 Colliertree Road, Airdrie, ML6 7DS (“the Applicant”)

Miss Candice Reid, 34 Clarkston Drive, Airdrie, ML6 7AH (“the Respondent”)

Tribunal Members: Ruth O’Hare (Legal Member) and Gerard Darroch (Ordinary Member)

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 Applicants

Background

- 1 By application to the Tribunal dated 19 February 2024 the Applicants sought an eviction order against the Respondent under ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicants submitted the following:-
 - (i) Copy Private Residential Tenancy Agreement between the parties dated 18 May 2018;
 - (ii) Notice to Leave dated 21 September 2023, confirming that proceedings would not be raised any earlier than 17 December 2023 and proof of service on the Respondent by email dated;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council and proof of delivery by email; and
 - (iv) Copy Terms and Conditions of Business between the Applicant and Abode Estate Agency.

- 2 The Tribunal was also in receipt of Title Sheet LAN142402 which confirmed the Applicants to be the registered owners of the property.
- 3 By Notice of Acceptance of Application a 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.

Case Management Discussion

- 4 Ms Louise Crofton of Independent MPS appeared on behalf of the Applicants. The Respondent was also in attendance.
- 5 The Tribunal explained that the application had been brought under ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which states that it is an eviction ground that the landlord intends to sell the property and has title to do so. This was the issue the Tribunal required to consider, as well as the reasonableness of granting the order. The Tribunal then asked the parties to address the Tribunal on their respective positions.
- 6 Ms Crofton confirmed that the Applicants sought an eviction order to enable them to sell the property. She described them as “accidental landlords”. This was the only property they rented out. It was to be their retirement fund. Ms Crofton advised that there had been ongoing issues with the roof of the property which would require significant funds in order to address. The Applicants did not have the finances to do this. Ms Crofton confirmed that the Applicants had instructed an estate agency and everything was in place to market the property. She advised that she had been in discussions with the Respondent and understood she had been making inquiries with regards to alternative accommodation however the Respondent had so far been unable to find a suitable property. In response to questions from the Tribunal Ms Crofton advised that it was likely the property would require a new roof and the Applicants were both in their sixties.
- 7 Ms Reid advised that she was keen to leave the property as soon as possible. However other private lets had proved too expensive. Ms Reid confirmed that she had spoken with the local authority and they had told her that they could assist her once an eviction order was granted by the Tribunal. She was more than happy to leave the property. In response to questions from the Tribunal Ms Reid confirmed that she was not objecting to the granting of the eviction order. She resided in the property with a daughter, aged 13. She wanted to obtain homeless priority from the local authority so that she could be rehoused.

Relevant Legislation

- 8 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.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received after 28 October 2022.

Findings in Fact

9 The parties entered into a Tenancy Agreement in respect of the property dated 18 May 2018.

10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 11 On 21 September 2023 the Applicant's representative emailed a Notice to Leave to the Respondent. The said Tenancy Agreement makes provision for notices to be sent by email.
- 12 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 17 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 Applicants have title to sell the property.
- 15 The Applicants require to sell the property to fund their retirement. The property is the only property that the Applicants rent out. The property was bought specifically as a retirement fund.
- 16 The Applicants are of retirement age.
- 17 The Applicants have engaged an estate agent and have made the necessary preparations to market the property for sale.
- 18 The Applicants intend to market the property for sale within three months of the Respondent ceasing to occupy.
- 19 The Respondent has sought assistance from the local authority in terms of rehousing. The Respondent has been advised by the local authority that they will assist her once an eviction order is granted by the Tribunal.
- 20 The Respondent resides in the property with a daughter aged 13.

Reasons for Decision

- 21 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.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 1 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.

- 23 The Tribunal was further satisfied on the basis of its findings in fact that the Applicants had title to sell the property and intended to do so within three months of the Respondent having vacated. The Tribunal accepted that their intention was genuine in this regard, based on the application paperwork and the submissions from Ms Crofton at the Case Management Discussion. 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.
- 24 The Tribunal accepted the Applicant's reason for selling the property, namely to fund their retirement. They were both of retirement age and it was natural that they would therefore be seeking to recoup the investment in order to provide for themselves. Ms Crofton had been credible and reliable in her submissions before the Tribunal and there was nothing to contradict the position put forward by the Applicants in this regard. The Tribunal also gave significant weight to the fact that the Respondent had firmly expressed her intention to move on from the property, and had been advised that she would be offered assistance from the local authority in the event that the Tribunal made an eviction order in the case. She had no objection to the order on that basis. Whilst the Tribunal had some concerns regarding the presence of a dependent in the property, ultimately it was clear that both parties were in agreement as to the way forward. This was a significant factor for the Tribunal to take into account in terms of assessing reasonableness.
- 25 Accordingly having regard to the circumstances of this particular case the Tribunal considered that the balance of reasonableness weighed in favour of making an eviction order.
- 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.

R. O'Hare

5 July 2024

Legal Member/Chair

Date