



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/24/0566

Re: Property at 20 Springfield Square, Bishopbriggs, Glasgow, G64 1PZ (“the Property”)

Parties:

Mr Charles McNaughton, 14 Brackenbrae Road, Bishopbriggs, Glasgow, G64 2AD (“the Applicant”)

Mr Samson Aderoju, Ms Towobola Agbaosi, 20 Springfield Square, Bishopbriggs, Glasgow, G64 1PZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order, with enforcement of said order suspended for a period of three calendar months.

Background

- 1 By application to the Tribunal received on 4 February 2024 the Applicant sought an eviction order against the Respondents under ground 4 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016.
- 2 In support of the application the Applicant provided:-
 - (i) Private Residential Tenancy Agreement between the parties dated 1 November 2021;
 - (ii) Notice to Leave dated 29 October 2023 citing ground 4 and stating that proceedings would not be raised any earlier than 2 February 2024 together with proof of service by email;

- (iii) Notice under section 11 to East Dunbartonshire Council together with covering email;
 - (iv) Email from the Applicant confirming his intention to move into the property; and
 - (v) Mandate from the Applicant authorising Sheila Fitzpatrick to represent him in the Tribunal proceedings.
- 3 By Notice of Acceptance of Application dated 3rd April 2024 a Legal Member with delegated powers from the Chamber President agreed that there were no grounds 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, was served on the Respondents by Sheriff Officers.
- 4 The Tribunal subsequently received correspondence from Sheila Fitzpatrick dated 29 April 2024 with a copy email from Slater Hogg & Howison confirming their appraisal of the property in which the Applicant was currently resident with a view to the sale of said property.
- 5 On 18 July 2024 the Tribunal received written representations from Raymond Heath of the Citizens Advice Bureau which included a mandate from the Respondents authorising him to represent them in the Tribunal proceedings and a description of the household with information as to local authority housing availability in the East Dunbartonshire Council area.

The Case Management Discussion

- 6 The Case Management Discussion took place by teleconference. The Applicant was represented by his sister Mrs Fitzpatrick. He was not personally present. The Respondents were both in attendance and represented by Mr Heath. The Tribunal asked both parties to address it on their respective positions regarding the application.
- 7 Mrs Fitzpatrick advised that the Notice to Leave had been served on the Respondents in October 2023. She had spoken with the Respondents in advance of serving the Notice so that they were aware of the Applicant's intentions. Mrs Fitzpatrick confirmed that the Applicant required possession of the property to live in it, as the house in which he currently resided was to be sold following the death of his mother. He had resided with his mother at that address. Mrs Fitzpatrick advised that the Notice to Leave had a vacation date of the 1st February 2024. She had kept in touch with the Respondents throughout the notice period to find out whether they were obtaining assistance from the local authority, at which point she discovered that there was another child in the family, which meant three children residing in the home. Mrs Fitzpatrick pointed out that the property was a two bedroom and she felt it would be better for the Respondents to seek more suitable accommodation with the local authority. The Respondents were in need of larger accommodation. Mrs Fitzpatrick had since discovered that the local authority would not entertain a homelessness application from the Respondents until

such time as an eviction order was granted by the Tribunal. She had therefore made the application to the Tribunal on the Applicant's behalf.

- 8 Mrs Fitzpatrick referred to the evidence she had submitted which confirmed that her mother's house was to be sold. An initial valuation had been carried out and it was anticipated that the house would go on the market in the next week. The estate agent anticipated that the property would likely sell within 4 to 6 weeks, with completion of the sale taking approximately three months. Mrs Fitzpatrick confirmed that her brother did not own any other property, other than the one occupied by the Respondents. The only other option would be for him to present as homeless which she did not think was reasonable. Mrs Fitzpatrick confirmed that the house in which the Applicant currently resided had been owned by their mother. She confirmed that there were multiple beneficiaries to her mother's estate and the plan was for the proceeds to be distributed amongst them. Mrs Fitzpatrick confirmed that she had four brothers, one of whom was her mother's executor. She advised that she herself was not an executor of her mother's estate.
- 9 Mr Heath addressed the Tribunal on behalf of the Respondents. He advised that he had reviewed the paperwork submitted with the application and it all appeared to be legally correct. His main concern was that the local authority would not consider a homelessness application from the Respondents until such time as an eviction order was granted. Mr Heath confirmed that the Respondents had looked at private lets in the area, however the rents were far greater than what they currently paid. Mr Heath confirmed that the Respondents had a young family who were all attending school or nursery in the Bishopbriggs area. There was currently a housing crisis in East Dunbartonshire which had led to waiting times for temporary accommodation. Mr Heath confirmed that if an eviction order was granted by the Tribunal the Respondents would make an application to the local authority for housing.
- 10 Mr Heath confirmed that the Respondents fully understood the Applicant's reasons for seeking an eviction order. However they were simply looking for more time to obtain alternative accommodation. Mr Heath advised that they sought a suspension of enforcement of the eviction order for a period of around three to four months, which would give the local homeless team the opportunity to assist them with housing.
- 11 Mrs Fitzpatrick advised that she objected to a suspension of the order. She pointed out that her brother would require to make arrangements to move from his current property and would require time to do this. She referred again to the timescales for the sale of her mother's house. She expressed concern that the local authority would not consider a homelessness application if the eviction order was suspended. Both Mr Heath and the Ordinary Member of the Tribunal confirmed their understanding that the granting of the eviction order, regardless of any suspension, would enable the local authority to consider an application from the Respondents.

- 12 The Tribunal proceeded to hold a short adjournment before confirming its decision to the parties.

Applicable Legislation

- 13 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”), 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 4

(1) It is an eviction ground that the landlord intends to live in the let property.

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

(a) the landlord intends to occupy 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 on account of that fact.

(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) includes (for example) an affidavit stating that the landlord has that intention.

Findings in Fact

- 14 The parties entered into a private residential tenancy agreement dated 01 November 2021.

- 15 On 29th October 2023 the Respondents were both served with a Notice to Leave by email. The said tenancy agreement permits the use of email for serving notices on the Respondents.
- 16 The Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It cited ground 4 of schedule 3 of the 2016 Act and confirmed that proceedings for possession would not be raised any earlier than 2 February 2024.
- 17 The Applicant currently resides in his mother's house. The Applicant's mother passed away at the end of 2023.
- 18 The Applicant's mother's house is to be sold. The property has been appraised and will shortly be placed on the market. The Applicant understands that the sale of the property will take around three months to complete.
- 19 The Applicant owns the property currently let to the Respondents. The Applicant owns no other properties.
- 20 The Applicant requires the property to live in following the sale of his mother's house.
- 21 The Respondents reside in the property with their three young children.
- 22 The Respondents have sought advice regarding rehousing with the local authority. The Respondents wish to obtain accommodation with the local authority.
- 23 The Respondents do not dispute the terms of the application. The Respondents will be able to make a homelessness application to the local authority upon the granting of an eviction order.

Reasons for Decision

- 24 In reaching its decision, the Tribunal took into account the application paperwork, written representations from the parties and the submissions at the Case Management Discussion. The Tribunal determined that it had sufficient information upon which to make a decision at the Case Management Discussion, and that it would not be prejudicial to the parties to do so.
- 25 The Tribunal was satisfied that the Applicant had served a Notice to Leave upon the Respondents on 29th October 2023 which complied with the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The Tribunal was therefore able to entertain the application before it under section 52 of the 2016 Act.

- 26 The Applicant sought an eviction order under ground 4 of Schedule 3 of the 2016 Act. Having considered the application paperwork and verbal submissions from Mrs Fitzpatrick, the Tribunal accepted that the Applicant intended to reside in the property on a permanent basis following the sale of his current home. There was nothing before the Tribunal to contradict the account of Mrs Fitzpatrick in this regard, which was not disputed by the Respondents, and the Tribunal found her evidence to be credible.
- 27 The Tribunal therefore considered the reasonableness of making an eviction order and the relevant factors in this case. The Tribunal gave significant weight to the fact that the Respondents were not opposing the application. Indeed they understood that were an eviction order to be granted it would then enable them to obtain alternative accommodation with the local authority. With regard to the Applicant's position, the Tribunal took into account the fact that the Applicant now required the property as his principal home due to a change in his personal circumstances. The Tribunal noted that the Applicant was not a professional landlord, in that this was the only property that he owned and let. Whilst the Tribunal would ordinarily have concerns over the reasonableness of granting an eviction order where there are children in the household, it was clear that the Respondents were intending on seeking a secure tenancy with the local authority in housing that would be more suitable to the size of their household.
- 28 However, the Tribunal had regard to the fact that the Respondents did have a young family, and the current housing situation in the local authority area would likely make it challenging in the short term for the local authority to source a property suitable for them. The Tribunal accepted that the local authority would not commence this process until the granting of an eviction order. The Tribunal therefore felt it would be reasonable to suspend enforcement of the order for a period of three months, which tied in with the estimated timescale for the sale of the Applicant's mother's home. Whilst the Tribunal accepted that both the Applicant and Mrs Fitzpatrick would be keen to progress the sale as quickly as possible, ultimately there did not appear to be any significant urgency and any detriment to the Applicant in a three month suspension would likely be insignificant when compared to the impact of eviction on the Respondents and their children.
- 29 Accordingly having weighed all relevant factors in this case, and taking into account the suspension of the order for a period of three months, the Tribunal ultimately concluded that it would therefore be reasonable to make an eviction order.
- 30 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

15 August 2024

Legal Member/Chair

Date