



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/24/1323

Re: Property at 29c Wilson Street, Airdrie, North Lanarkshire, ML6 0EQ (“the Property”)

Parties:

Ms Sandra Mutch, 24 Ashgrove, Airdrie, North Lanarkshire, ML6 8JP (“the Applicant”)

Mr Stanley Donaldson, 29c Wilson Street, Airdrie, North Lanarkshire, ML6 0EQ (“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 Applicant

Background

- 1 By application to the Tribunal dated 19 March 2024 the Applicant 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;
 - (ii) Notice to Leave dated 20 November 2023, confirming that proceedings would not be raised any earlier than 13 February 2024 and signed confirmation of hand delivery from the Respondent dated 18 March 2024;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council and proof of delivery by email dated 19 March 2024;

- (iv) Mandate from the Applicant authorising Aquila Management Services to represent her in the Tribunal proceedings; and
 - (v) Letter from Aquila Management Services dated 18 March 2024 confirming the Applicant's instructions to them to act as sales agent for the property.
- 2 The Tribunal was also in receipt of Title Sheet LAN107219 which confirmed the Applicant to be the registered owner 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 Mr Paul Clark of Aquila Management Services appeared on behalf of the Applicant. The Applicant herself was not in attendance. The Respondent was not present. The Tribunal noted that he had received service of the application paperwork, which included the date and time of the Case Management Discussion, and therefore determined to proceed in his absence.
- 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 Mr Clark address the Tribunal on the Applicant's position.
- 6 Mr Clark explained that his firm had been engaged by the Applicant as estate agents to sell the property on her behalf. He confirmed that his firm did not manage the tenancy for the Applicant. Mr Clark explained that the Applicant would be likely to lose the property if she was unable to proceed with the sale. The property had a mortgage in place and the rent she was receiving was not covering the ongoing costs. Mr Clark confirmed that this was the only property let by the Applicant and she was keen to get out of the rental market altogether. Mr Clark advised that the Respondent was seeking accommodation with the local authority and required the eviction order so that he could progress a homelessness application. The Respondent was a single man with no dependents. Mr Clark explained that he had not met the Respondent personally but understood him to be in the region of 50 years old. Mr Clark was not aware of any vulnerability on the part of the Respondent.

Relevant Legislation

- 7 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.

Findings in Fact

- 8 The parties entered into a Tenancy Agreement in respect of the property which commenced on 2 April 2022.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 On 23 November 2023 the Applicant personally delivered a Notice to Leave to the Respondent.
- 11 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 18 February 2024.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 The Applicant has title to sell the property.

- 14 The property has a mortgage in place. The rent received under the terms of the tenancy does not cover the mortgage costs.
- 15 The Applicant requires to sell the property to alleviate financial detriment.
- 16 The Applicant has engaged an estate agent to sell the property.
- 17 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 18 The Respondent is a single male who resides in the property alone. The Respondent is approximately 50 years old.
- 19 The Respondent is seeking accommodation with the local authority. The making of an eviction order will assist the Respondent in this regard.

Reasons for Decision

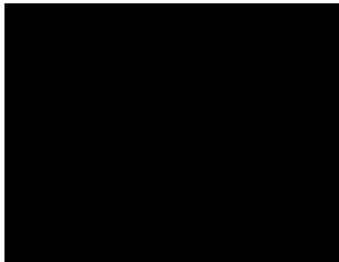
- 20 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had not made any written representations and had not put forward any objection to the application. It was therefore clear that there were no matters in dispute that would require a hearing to be fixed.
- 21 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.
- 22 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 her intention was genuine based on the application paperwork and the submissions from Mr Clark 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.
- 23 The Tribunal accepted the Applicant's reason for selling the property, namely to remove herself from the rental market and prevent any further financial loss as a result of the rent failing to cover her mortgage costs. Mr Clark had been credible and reliable in his submissions before the Tribunal and there was nothing from the Respondent to contradict the position put forward by the

Applicant. The Tribunal also gave weight to Mr Clark's submissions regarding the Respondent's intentions, namely that he was seeking assistance from the local authority and the making of the eviction order would support his homelessness application. This reflected the Tribunal's own knowledge of the local authority's application process and was a significant factor for the Tribunal to take into account in terms of assessing reasonableness. Furthermore there were no dependents in the property that would give the Tribunal cause for concern, with the Respondent being a single male who resided alone.

- 24 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.
- 25 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.



Legal Member/Chair

9 August 2024

Date