



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/24/2042

Re: Property at 18 2F1 Viewforth Gardens, Edinburgh, EH10 4ET (“the Property”)

Parties:

Mr Paul John McWilliams, 8 Western Terrace, Edinburgh, EH12 5QF (“the Applicant”)

Mr Kenny Taylor, 18 2F1 Viewforth Gardens, Edinburgh, EH10 4ET (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

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 on grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016

Background

- 1 By application to the Tribunal dated 2 May 2024 the Applicant sought an eviction order against the Respondent under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and grounds 1 and 12 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 4 December 2023, confirming that proceedings would not be raised any earlier than 29 February 2024 and proof of personal service upon the Respondent in the form of a photograph;

- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council and proof of delivery by email;
 - (iv) Mandate from the joint owner Lisa McWilliams authorising the Applicant to proceed with the application in his sole name;
 - (v) Rent statement;
 - (vi) Copy correspondence from the Applicant's representative to the Respondent dated 16th April 2024 and 24th April 2024 with information in line with the rent arrears pre-action protocol; and
 - (vii) Copy email correspondence from Warners Solicitors regarding the sale of the property.
- 2 The Tribunal was also in receipt of Title Sheet MID189874 which confirmed the Applicant and Lisa McWilliams to be the registered joint 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 for 7 October 2024 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 in accordance with Rule 17(2) of the Rules of Procedure. No response to the application was received from the Respondent.
- 4 On 20 September 2024 the Applicant's representative emailed the Tribunal with additional representations. They advised that the arrears had increased to £2595 and produced a letter dated 20 September 2024 that had been sent to the Respondent from the Applicant's representative regarding his rent arrears. Following a request from the Tribunal the Applicant's representative provided an updated rent statement by email dated 26th September 2024 confirming that the arrears had reduced to £2495.

Case Management Discussion

- 5 Ms Jennifer Anderson of Complete Clarity Solicitors appeared on behalf of the Applicant. The Applicant himself was in attendance and accompanied by his wife Lisa McWilliams. 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 in accordance with Rule 17(2) of the Rules of Procedure, and therefore determined to proceed in his absence.
- 6 The Tribunal explained that the application had been brought under grounds 1 and 12 of Schedule 3 of the 2016 Act and explained the legal tests that the Tribunal required to consider, which included the reasonableness of granting the order. The Tribunal then asked Ms Anderson to address the Tribunal on the Applicant's position.
- 7 Ms Anderson explained that the application concerned the property at 2F1, 18 Viewforth Gardens, Edinburgh, EH10 4ET. The Applicant had offered to lease the property to the Respondent with the tenancy commencing on 13 March

2019. The Respondent was previously known to the Applicant as an acquaintance. The Applicant was made aware that the Respondent was in need of housing. The Applicant had therefore sought to assist by offering to lease the property to the Respondent. Ms Anderson pointed out that the tenancy referred to a short assured tenancy but given the start date it was in fact a private residential tenancy. As part of the agreement the Respondent had undertaken to pay rent of £850 per month.

- 8 Ms Anderson explained that the reason for the application was due to a change in the Applicant's circumstances. The Applicant's employment status had been altered and he had been made redundant. He had since sought employment in another field for personal mental health reasons which had led to a substantial drop in his income. The present situation was therefore unsustainable and the Respondent's rent arrears had worsened the financial strain upon him. The Applicant was therefore seeking to sell the property in order to release equity and alleviate the financial pressure he was experiencing. Ms Anderson confirmed that the Applicant had instructed agents to proceed with the marketing the property.
- 9 Ms Anderson went on to address the rent arrears. She confirmed that, at the time of making the application, the Respondent had failed to pay the full rent since June 2020. Payments had been sporadic and incomplete. When the application was made the arrears stood at £2545. The Respondent had since made interim payments on an inconsistent basis, with some slight overpayments which had reduced the arrears slightly. The balance now stood at £2495. Ms Anderson pointed out that although the arrears had reduced by a small amount the payments were not consistent and this put substantial strain on the Applicant, with no way of predicting when and what rent would be paid. The Applicant and the Applicant's representative had both made attempts to communicate with the Respondent and discuss the arrears but he had made no proposals for repayment.
- 10 In response to questions from the Tribunal Ms Anderson advised that the Respondent was believed to be employed and in receipt of an income. There was no entitlement to benefits that the Applicant was aware of. Ms Anderson confirmed that the Applicant had attempted to assist the Respondent with finding alternative properties. A number of properties had been identified with a cheaper monthly rent however the Respondent had not been responsive to the offers of assistance.
- 11 The Applicant then provided further information regarding the Respondent's personal circumstances. He advised that he believed the Respondent to be around 53 or 54 years old, with a daughter who had just finished sixth year at secondary school and a son who was in fourth year at secondary school. However the Applicant did not believe that the children resided with the Respondent on a permanent basis. The Respondent had taken on the tenancy after separating from his children's mother. The Applicant advised that he was not aware of any vulnerabilities on the Respondent's part, or any health issues. The Applicant confirmed that he and his wife had another flat that they rented

out. The flat had belonged to his mother and it was promised to the Applicant's sons.

Relevant Legislation

- 12 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

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.

Schedule 3, Part 12

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of

a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

Findings in Fact

- 13 The parties entered into a Tenancy Agreement in respect of the property dated 13 March 2019.
- 14 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 15 On 4 December 2023 the Applicant personally delivered a Notice to Leave to the Respondent at the property.
- 16 The Notice to Leave cited grounds 1 and 12 and confirmed that proceedings would not be raised any earlier than 29 February 2024.
- 17 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 18 The Applicant has title to sell the property along with his wife Lisa McWilliams.
- 19 The Applicant was made redundant from his previous employment. The Applicant has since taken up employment in a different sector due to personal mental health reasons resulting in a significant drop in his income.
- 20 The Applicant is currently experiencing financial difficulties. The Applicant requires to release the equity in the property in order to assist with his financial situation.
- 21 The Applicant and his wife own and rent out another property. The property belonged to the Applicant's mother and is promised to his sons.
- 22 The Applicant has engaged an agent to sell the property.
- 23 The Applicant intends to sell or market the property within three months of the Respondent ceasing to occupy.
- 24 In terms of Clause 3 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £850 per calendar month.
- 25 In June 2020 rent arrears began to accrue on the Respondent's rent account. Since then the Respondent's rent payments have been sporadic and inconsistent.

- 26 As at the date of service of the Notice to Leave arrears in the sum of £2095 were outstanding.
- 27 As at the date of the Case Management Discussion arrears in the sum of £2495 were outstanding.
- 28 The Applicant and the Applicant's representative have made attempts to communicate with the Respondent regarding his rent arrears and to assist him in finding alternative accommodation. The Respondent has failed to engage with the Applicant and the Applicant's representative in response to said attempts.
- 29 The Respondent is approximately 53 or 54 years old.
- 30 The Respondent has two secondary school-aged children. The Respondent's children do not reside with him on a permanent basis.
- 31 The Respondent is in employment.
- 32 The arrears are not a result of the failure or delay in payment of a relevant benefit.

Reasons for Decision

- 33 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.
- 34 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon grounds 1 and 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.
- 35 The Tribunal therefore had to consider whether grounds 1 and 12 had been met in this case. The Tribunal accepted the Applicant's evidence as fact, based on the submissions made by Ms Anderson at the Case Management Discussion which were supported by documents submitted with the application. The Respondent had not sought to put any representations forward to dispute the Applicant's position and the Tribunal had no reason to question the evidence before it from the Applicant.

- 36 Accordingly, with regard to ground 1, the Tribunal was satisfied that the Applicant had title to sell the property and intended to do so, or at least advertise it for sale, within three months of the Respondent having vacated. The Tribunal accepted that his intention was genuine in this regard, in that he had engaged a solicitor to conduct the sale and had provided clear justification for taking said action to relieve the financial pressures he was experiencing.
- 37 With regard to ground 12, the Tribunal was satisfied that there were arrears outstanding for three consecutive months, both at the date of service of the Notice to Leave, and the date of the Case Management Discussion. The rent statement produced by the Applicant showed that the account had been consistently in arrears since June 2020.
- 38 The Tribunal therefore went on to consider whether it was reasonable in the circumstances of the case to make an eviction order.
- 39 The Tribunal accepted the Applicant's reason for selling the property, namely to partially remove himself from the rental market and assist with his financial situation which had been brought about by a deterioration in his mental health. This was a credible explanation for the action he had taken and the Tribunal applied significant weight to this as a relevant factor in the determination of reasonableness.
- 40 The Tribunal also accepted that the arrears in this case were longstanding and there was no evidence of a regular pattern of payments by the Respondent. The Tribunal believed that this would be a source of ongoing stress to the Applicant when considered against the background of his financial difficulties. The Respondent had repeatedly defaulted on his rental obligations with no reasonable explanation for his failure to pay the full rent. The payment of rent was a fundamental obligation of the tenancy. The Tribunal accepted that there had been attempts by the Applicant to resolve the situation to no avail. These were all relevant factors to which the Tribunal applied significant weight.
- 41 With regard to paragraph (4) of ground 12, the Tribunal was satisfied, based on the submissions from Ms Anderson, that the arrears were not due, in whole or in part, to any delay in the payment of universal credit. The Respondent had no known entitlement to benefits as he was believed to be in employment, and there was no information from him to the contrary. The Tribunal also had before it correspondence that had been sent from the Applicant's representative to the Respondent in compliance with the rent arrears pre-action protocol.
- 42 Finally the Tribunal took into account the Respondent's personal circumstances, noting that he had no young dependents that resided with him, he was in employment and in his mid-fifties. These were not however factors that the Tribunal considered outweighed the reasonableness of making an eviction order in this case.

- 43 Taking the above factors into account, the Tribunal concluded that it would be reasonable to make an eviction order in the particular circumstances of this case, and that grounds 1 and 12 had been met.
- 44 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.

Ruth O'Hare

7 October 2024

Legal Member/Chair

Date