



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/24/1698

Re: Property at 10 Rosewell Road, Bonnyrigg, EH19 3PA (“the Property”)

Parties:

Mr Colin William Tait, 2 Newbigging Farm Cottages, Rosewell, Midlothian, EH24 9DY (“the Applicant”)

Ms Chyvonne Rowan, 10 Rosewell Road, Bonnyrigg, EH19 3PA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (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 12 April 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 dated 20 February 2020;
 - (ii) Notice to Leave dated 19 January 2024, confirming that proceedings would not be raised any earlier than 12 April 2024 and signed confirmation of personal delivery from the Respondent dated 19 January 2024;
 - (iii) Notification of the application to Midlothian Council and proof of delivery by email;

- (iv) Copy letter from Neilson Solicitors dated 20 May 2024 confirming they had been instructed to sell the property once vacant possession was obtained; and
 - (v) Copy email correspondence between the Applicant and the Respondent.
- 2 The Tribunal was also in receipt of Title Sheet MID31104 which confirmed the Applicant to be the registered owner of the property.
 - 3 By Notice of Acceptance of Application dated 17 June 2024 a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion on 24 October 2024. Notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers in accordance with Rule 17(2) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”).
 - 4 No written representations were received from the Respondent following service of the notification.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 24 October 2024. The Applicant was in attendance and accompanied by his wife as an observer. The Respondent was also present.
- 6 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 Applicant to address the Tribunal on the Applicant’s position.
- 7 The Applicant advised that he wished to sell the property. He suffered from chronic fatigue and worked a manual job. He was 60 years old. He was looking to semi-retire. He was intending on selling his own property to facilitate this and required the funds from the let property to carry out repairs in order to do so. In response to questions from the Tribunal the Applicant confirmed that he had another let property that was occupied by his foster sister as her main home. He wished to downsize and retire. He lived with his wife and his son aged 16.
- 8 The Respondent confirmed that she was not disputing the application. She could not fault the Applicant and did not want to stand in his way. She too felt that he needed to retire. The Respondent confirmed that she had sought assistance with rehousing from the local authority. She had met with them in person. However they would not make a decision on her application until the Tribunal made an eviction order. The sooner this happened, the sooner her application would be dealt with. In response to questions from the Tribunal the Respondent confirmed that she would not be given homeless priority by the local authority under an eviction order was granted. She resided alone with her

dog and was in full time employment in an office for a company that provided conservatories, windows and doors. She occasionally cared for her grandchildren when her son wasn't able to.

- 9 The Tribunal held a short adjournment to deliberate, at which point parties left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

- 10 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.

Findings in Fact

11 The parties entered into a Tenancy Agreement dated 20 February 2020.

- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 19 January 2024 the Applicant personally delivered a Notice to Leave to the Respondent.
- 14 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 12 April 2024.
- 15 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 The Applicant has title to sell the property.
- 17 The Applicant requires to sell the property in order to downsize and retire. The Applicant is 60 years old and suffers from chronic fatigue. The Applicant resides with his wife and son, aged 16.
- 18 The Applicant has instructed a solicitor to sell the property once vacant possession is obtained.
- 19 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 20 The Respondent resides alone. The Respondent is in full time employment.
- 21 The Respondent has sought assistance with rehousing from the local authority. The making of an eviction order will assist the Respondent in this regard by ensuring she has homeless priority.

Reasons for Decision

- 22 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 confirmed that she did not object to the application. It was therefore clear that there were no matters in dispute that would require a hearing to be fixed.
- 23 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's 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 personally served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application.
- 24 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 his

intention was genuine based on the application paperwork and the submissions from the Applicant and the Respondent at the Case Management Discussion.

- 25 The Tribunal therefore considered the reasonableness of making an eviction order. The Tribunal accepted the Applicant's reason for selling the property, namely to downsize in order to fund his retirement. The Tribunal gave weight to the Applicant's health condition as a contributing factor. The Tribunal also took into account the Respondent's circumstances, noting that she had nothing but positive comments regarding the Applicant and she had been proactive in seeking assistance with rehousing from the local authority. The Tribunal accepted that the local authority would give the Respondent homeless priority were an eviction order to be granted. 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, and no particular vulnerabilities on the Respondent's part, that would give the Tribunal cause for concern, with the Respondent being a single female who resided alone and was in full time employment.
- 26 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.
- 27 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

24 October 2024

Legal Member/Chair

Date