



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/24/1861

Re: Property at 15 Rochsolloch Road, Airdrie, ML6 9BB (“the Property”)

Parties:

Ms Fiona Gardner, 10 Park View, Kilbarchan, Johnstone, Renfrewshire, PA10 2LW (“the Applicant”)

Mr John Gibson, 15 Rochsolloch Road, Airdrie, ML6 9BB (“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 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 8 January 2024, confirming that proceedings would not be raised any earlier than 4 April 2024 and proof of delivery by email to the Respondent;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 of the application to North Lanarkshire Council and proof of delivery by email;
 - (iv) Instruction to Sell and Terms of Business between the Applicant and the Applicant’s Representative dated 10 January 2024;

- (v) Statement from the Applicant; and
 - (vi) Copy email correspondence between the Applicant's Representative and the Respondent.
- 2 The Tribunal was also in receipt of Title Sheet LAN95905 which confirmed the Applicant to be the registered owner of the property.
 - 3 By Notice of Acceptance of Application dated 13 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. On 23rd October 2024 the Applicant's Representative emailed the Tribunal with further submissions consisting of emails between them and the Respondent, and the Applicant.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 24 October 2024. The Applicant was represented by Martin Urquhart of DJ Alexander. The Applicant herself was not in attendance. The Respondent was present and accompanied by his partner Emma McHugh as an observer.
- 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 parties to make submissions regarding the application.
- 7 Mr Urquhart explained that the Applicant was looking for possession of the property so it could be sold. She and her partner were struggling financially and had been for some time. They had appreciated the long term nature of the tenancy. The Respondent had been a good tenant and the Applicant liked to think she had been a good landlord. The Applicant's circumstances had however changed on a personal and financial level. Most recently the Applicant and her partner had separated and her partner was no longer in full time employment. The Applicant was working two part time jobs to make ends meet. The sale of the property would allow them to separate and move ahead by securing their immediate future and the future of their three young children. This was the only property the Applicant owned and rented out. Her finances had been impacted before but even more so now that she and her partner had separated.

- 8 The Respondent advised that he did not dispute the application. He had tried to be a good tenant throughout the tenancy. When the notice to leave was served he had immediately spoken with the local authority to try and obtain rehousing. He and his partner were not in a position whereby they could afford current private rents. They had since been in constant contact with the local authority trying to get a property from them so that they could vacate the premises. However there had been no offers as yet. The Respondent confirmed that he and his partner currently had the maximum achievable points for their homelessness application. It was just a case of waiting for a property. The local authority had asked the Respondent to get in touch as soon as the Tribunal proceedings had concluded so that they could update their files, as it may help him to get a property quicker. The local authority had also told the Respondent and his partner to await the outcome of the proceedings as it would give them more time to get a property. The Respondent confirmed that his partner required a stable home due to suffering from chronic PTSD as a result of multiple miscarriages. She was in receipt of disability benefits. Up until recently the Respondent had been receiving a carers allowance.
- 9 In response to questions from the Tribunal the Respondent confirmed that he had been advised by the local authority that he and his partner would receive homeless priority were an eviction order to be granted and should secure a home more quickly as a result. The Respondent and his partner did not have any dependents.
- 10 Mr Urquhart explained that the Applicant was extremely sympathetic towards the Respondent's situation. It was not a pleasant situation for any of them to be in.
- 11 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

- 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.

Findings in Fact

- 13 The parties entered into a tenancy agreement which commenced on 29 June 2019.
- 14 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 15 On 18 January 2024 the Applicant emailed a Notice to Leave to the Respondent.
- 16 The Respondent has consented to the service of notices by email under the terms of the said tenancy agreement.
- 17 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 4 April 2024.
- 18 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 19 The Applicant has title to sell the property.
- 20 The Applicant requires to sell the property due to a decline in her financial situation.
- 21 The property is subject to a mortgage. The Applicant cannot re-mortgage the property due to its location above a fast food premises. The Applicant cannot afford the costs of repairing and maintaining the property. The income from the property does not cover said costs.

- 22 The Applicant and her partner cannot afford to carry out necessary repairs to their own property.
- 23 The Applicant's partner has been out of full time employment since the pandemic lockdown. The Applicant and her partner both receive universal credit.
- 24 The Applicant has two part-time jobs to supplement her income. The Applicant and her partner have three young children.
- 25 The Applicant and her partner have recently separated.
- 26 The current situation has resulted in the Applicant falling into further debt to cover her costs.
- 27 The Applicant has instructed the Applicant's Representative to sell the property once vacant possession is obtained.
- 28 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 29 The Respondent resides in the property with his partner who suffers from chronic post-traumatic stress disorder as a result of multiple miscarriages. The Respondent's partner receives disability allowance.
- 30 The Respondent and his partner have no dependents.
- 31 The Respondent has sought assistance with rehousing from the local authority and has had the maximum points awarded to his application. The making of an eviction order will assist the Respondent in expediting his application for housing by ensuring he and his partner have homeless priority.

Reasons for Decision

- 32 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 he did not dispute the application. It was therefore clear that there were no matters in dispute that would require a hearing to be fixed.
- 33 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 properly served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application.

- 34 The Tribunal was further satisfied on the basis of its findings in fact that the Applicant 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 Urquhart and the Respondent at the Case Management Discussion.
- 35 The Tribunal therefore considered the reasonableness of making an eviction order.
- 36 The Tribunal had great sympathy for all parties involved in this case. The Tribunal accepted the Applicant was struggling financially and was in need of the proceeds from the sale of the property in order to assist her in this regard. This appeared to have become more pressing following the recent separation from her partner. The Tribunal gave weight to the fact that the income from the property was not sufficient to meet the costs of repairs and maintenance, and that the Applicant herself was unable to afford repairs to her own property, with both herself and her partner in receipt of universal credit. The Tribunal also gave weight to the fact that the Applicant had three young children to support, as a newly single parent.
- 37 The Tribunal also took into account the Respondent's circumstances, noting that he resided with his partner who suffered from PTSD. Whilst this did cause the Tribunal some concern, the Tribunal did note that the Respondent and his partner had been proactive in applying to the local authority and had been awarded the maximum points available for their application. The Tribunal was also aware from its own knowledge, and having regard to the Respondent's submissions at the CMD, that the local authority would give the Respondent homeless priority were an eviction order to be granted. This was a significant factor for the Tribunal to take into account in terms of assessing reasonableness. Furthermore there were no dependents in the property at risk of homelessness that would give the Tribunal cause for concern.
- 38 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. The Tribunal considered that the prejudice to the Applicant were she not able to sell the property in order to mitigate against any further financial loss outweighed the prejudice to the Respondent were an eviction order to be granted, as the Respondent would be given homeless priority by the local authority which would expedite his application for rehousing.
- 39 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

28 October 2024

Legal Member/Chair

Date