



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/24/2733

Re: Property at 2 Kilmichael Avenue, Newmains, Wishaw, ML2 9NX (“the Property”)

Parties:

Bank of Scotland PLC, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

Ms Stacey Quinn, Mr Kirk O' Neil, 2 Kilmichael Avenue, Newmains, Wishaw, ML2 9NX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with enforcement of the order suspended until 3 January 2025.

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondents in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 2 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the Respondents and Paul Gallacher dated 14 February 2020;

- (ii) Notice to Leave dated 26 January 2024 citing ground 2, together with certificates of service on the Respondents by Sheriff Officers dated 29 January 2024;
 - (iii) Notices under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council dated 13 January 2023, 14 April 2023 and 14 June 2024 together with proof of service by email;
 - (iv) Form BB Notice to Occupier dated 13 January 2023; and
 - (v) Extract Decree from Hamilton Sheriff Court dated 2 August 2023
2. The Tribunal was also in receipt of the title deeds for the property in the form of Land Certificate LAN149487. The title deeds confirmed that Paul Gallacher was the owner of the property, and that a standard security had been granted by him in favour of the Applicant in respect of the property on or around 12 May 2008.
 3. By Notice of Acceptance of Application dated 8 July 2024 a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 28 October 2024. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 4. No representations were received from either party in advance of the Case Management Discussion.

Case Management Discussion

5. The Case Management Discussion took place on 28 October 2024 by teleconference. The Applicant was represented by Ms Katie MacDonald from Aberdeen Considine Solicitors. The Respondents were not in attendance. The Tribunal noted that they had received proper notification of the Case Management Discussion in terms of Rule 17(2) of the Rules of Procedure and therefore determined to proceed with the Case Management Discussion in her absence.
6. The Tribunal asked Ms MacDonald for her submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
7. Ms MacDonald advised that a decree had been granted in favour of the Applicant in August 2023 which entitled them to repossess and sell the property. A Notice to Leave was served on the Respondents thereafter which expired on 23 April 2024. The Respondents had previously been served with a Form BB Notice to Occupiers in January 2023. They had therefore been given ample time to vacate the property. Ms MacDonald confirmed that she spoke with Stacey Quinn in May

2024. Ms Quinn advised that she had spoken to the local authority regarding rehousing but nothing suitable had come forward as yet. Sheriff officers subsequently attended the property on Friday 25th October 2024 and noted that the Respondents were still in residence. The officers spoke with Kirk O'Neill who stated that the Respondents would leave the property once they obtained suitable alternative accommodation. Ms MacDonald advised that she understood the Respondents had two children, both under the age of 16. It was the Applicant's position that an eviction order was reasonable in the circumstances of the case.

8. The Tribunal queried why it had taken from August 2023, when the decree was granted by the court, to January 2024 to serve the notice to leave on the Respondents. Ms MacDonald advised that there were a number of procedures that the Applicant had to go through, including carrying out investigations to identify the tenants. The Applicant did not have a copy of the tenancy agreement and had obtained this from the Respondents themselves.
9. In response to further questions from the Tribunal Ms MacDonald confirmed that she was not aware of any particular vulnerabilities on the part of the Respondents or their children. She had spoken with Stacey Quinn following the expiry of the Notice to Leave to make sure Ms Quinn was aware of the next steps. Ms Quinn had confirmed that she had not received any suitable offers of accommodation from the Council and was unsure about what to do next. Ms MacDonald recommended that Ms Quinn contact the Council again, and speak with the Citizens Advice Bureau. There had been no further communication with the Respondents, other than the conversation between Mr O'Neill and Sheriff officers on 25th October 2024. Ms MacDonald had emailed Ms Quinn on the 20th September 2024 and the 21st October 2024 but no response was forthcoming. Ms MacDonald confirmed that the Applicant would have no objection to a suspension of the enforcement of any eviction order to give the Respondents additional time to vacate the property.
10. The Tribunal adjourned to deliberate, at which point Ms MacDonald left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

11. 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 2

2(1) It is an eviction ground that a lender intends to sell the let property.

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

(a) the let property is subject to a heritable security,

(b) the creditor under that security is entitled to sell the property,

(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

Findings in Fact

12. The Respondents entered into a tenancy agreement with Paul Gallacher dated 14 February 2020.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
14. The property is subject to a standard security which was granted by Paul Gallacher in favour of the Applicant.
15. On or around 13 January 2023 the Applicant sent a Notice of Calling-up of a standard security to Paul Gallacher. At the same time the Applicant sent a Form BB – Notice to the Occupier to the Respondents.
16. On 12 August 2023 the Applicant obtained a decree from Hamilton Sheriff Court. The decree entitles the Applicant to repossess and sell the property.
17. On 29 January 2024 the Applicant delivered a Notice to Leave to the Respondents by Sheriff Officers.

18. The Notice to Leave included ground 2 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 23 April 2024.
19. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
20. The Applicant requires possession of the property in order to sell it.
21. The Respondents reside in the property with two children who are both under the age of 16.
22. The Respondents have sought assistance with rehousing from the local authority. The Respondents are awaiting an offer of suitable accommodation from the local authority.
23. The Respondents are willing to vacate the property once an offer of suitable accommodation is received.

Reasons for Decision

24. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties. The Respondents had both been given the opportunity to attend the Case Management Discussion, or make written representations, and had chosen not to do so.
25. The application before the Tribunal was accompanied by a Notice to Leave which had been served upon the Respondents, and which confirmed the Applicant's intention to rely upon ground 2 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.
26. The Tribunal therefore considered whether ground 2 of Schedule 3 of the 2016 Act had been met.
27. The Tribunal accepted, based on the documents provided by the Applicant, that a standard security had been granted in their favour by Paul Gallacher over the property, that a calling up notice had been served following Mr Gallacher's default, and that the Applicant was now in receipt of a sheriff court decree that entitled them to recover possession and sell the property. The Tribunal further accepted that the Applicant required vacant possession of the property in order to achieve the best market price.
28. The Tribunal then considered the question of reasonableness. The Tribunal found Ms MacDonald to be credible in her submissions and accepted them as fact. The Tribunal therefore accepted that she had spoken with the Respondents, and had been told by them that they were in contact with the local authority with a view to rehousing. Whilst the Tribunal noted that there appeared to be two young children residing with the Respondents, it was also aware that the local authority would have an obligation to provide accommodation to them were an

eviction order to be granted. Furthermore, based on the Tribunal's own knowledge, it was likely that the eviction order would in fact assist the Respondents by expediting their application for housing. There was no indication of any health issues or particular vulnerabilities on the part of the Respondents or their children that gave the Tribunal cause for concern. The Respondents had not made any representations, nor had they attended the Case Management Discussion, and the Tribunal was therefore reliant upon the submissions from the Applicant in this regard.

29. The Tribunal therefore gave significant weight to the Applicant's right to recover possession and sell the property following the calling up of the standard security. There were no relevant factors before the Tribunal that outweighed that right in the Tribunal's assessment of reasonableness.
30. Accordingly, the Tribunal ultimately concluded that ground 2 had been met and it would be reasonable to make an eviction order.
31. The Tribunal considered however that it would be reasonable to allow the Respondents an extended period of time to obtain a suitable offer of accommodation from the local authority. Ms MacDonald had confirmed that the Applicant would not object to this. The Tribunal therefore determined to suspend the enforcement of the eviction order until 3 January 2025.
32. 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