



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/24/2033

Re: Property at 4 Harperdean Terrace, Haddington, EH41 3BP (“the Property”)

Parties:

Ross Harper Property, Office 2, Craigs Business Centre, 2 MacDowall Street, Paisley, PA3 2NB (“the Applicant”)

AquireUk Limited, Skerrington Farmhouse, Glaisnock Road, Cumnock, KA18 3BU (“the Applicant’s representative”)

Ms Carole Mullins, 4 Harperdean Terrace, Haddington, EH41 3BP (“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 make an eviction order with enforcement of said order suspended for a period of three months.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondents under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-
 - (i) Notice to Leave dated 2 February 2024, confirming that proceedings would not be raised any earlier than 26 April 2024 and proof of delivery to the Respondent by email;

- (ii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 of the application to East Lothian Council and proof of delivery by email;
 - (iii) Copy letter from the Applicant confirming instructions to sell the property once vacant possession is obtained and authorising the Applicant's representative to act for them in the Tribunal proceedings; and
 - (iv) Copy emails between the Applicant's representative and the Respondent.
- 2 The Tribunal was also in receipt of Title Sheet ELN430 which confirmed the Applicant to be the registered owner of the property.
 - 3 By Notice of Acceptance of Application dated 5 July 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 18 November 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"). Both parties were invited to make written representations.
 - 4 No written representations were received from either party in advance of the Case Management Discussion.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 18 November 2024. The Applicant was represented by Ms Margaret Hazlett, an employee of the Applicant's representative. The Respondent was in attendance.
- 6 The Tribunal proceeded to hear submissions from the parties on their respective positions regarding the application.
- 7 Ms Hazlett explained that the property had been handed to the Applicant's representative in November 2023 with instructions that the Applicant wished to refurbish the property and sell it. She confirmed that the Applicant intended to do so within three months of an eviction order being granted. Ms Hazlett had waited to deliver a notice to leave to the Respondent, not wanting to do so over the festive period. On 10th January 2024 she had contacted the Respondent to inform her of the Applicant's intention. She had also visited the property and taken steps to ensure it was compliant with the various regulations. Ms Hazlett explained that communication had subsequently reduced, with the Respondent requesting only email contact. The rent wasn't being paid. The notice to leave was then sent to the Respondent.
- 8 Ms Hazlett explained that the property had been sold to the Applicant by Auction House. The Applicant's representative worked under the same umbrella as that firm. The Applicant became the owner of the property, as well as the manager. It was always their intention to sell it on. Ms Hazlett advised that the property was not fully compliant with the repairing standard, albeit the

gas safety and electrical works had been brought up to date. The former owner had not done anything in this regard. Ms Hazlett understood that there had been no tenancy agreement in place when the Respondent took up occupation during the coronavirus lockdown. The Respondent had communicated with the former owner via Whatsapp.

- 9 In response to questions from the Tribunal Ms Hazlett confirmed that Ross Harper Property were the owner and landlord of the property. The Tribunal confirmed that this would be reflected in the decision and Ms Hazlett confirmed her agreement to that.
- 10 The Respondent made submissions to the Tribunal. She confirmed that she had moved into the property in April or May 2020 during the coronavirus lockdown. She had seen it advertised on Facebook. From the outset of the tenancy the former owner would make excuses to avoid doing repairs. The former owner blamed the lockdown for the lack of availability of contractors. However this continued after the lockdown ceased. The Respondent would receive abusive phone calls from the former owner. On one occasion the former owner had said that someone would come to the property and throw her out because she had complained about items that had been left in the garden by the former owner. There was no heating, the water wasn't working and the toilet kept breaking. The Respondent had to have her son attend to these issues. In March or April 2023 the Respondent received a letter from the local authority advising that the former owner had been struck off the landlord register. The Respondent did not know why. The Respondent was advised by the local authority not to pay any rent. The Respondent continued to receive threats from the former owner. She was then given a notice to leave by the former owner requiring her to leave the property by the end of August 2023. She had gotten in touch with the local authority who had advised that she would need to wait until an eviction order was granted before she could be rehoused. The Respondent had started packing up her things. However when the end of August arrived nothing happened.
- 11 The Respondent explained that she had then received a telephone call from a woman stating that her firm wished to purchase the property and asking if they could visit. The woman advised that the Respondent would be given a lease on the same terms as before. The Respondent spoke to the council who told her that was fine. A man had visited the property to take photos and measurements. He told her that he was buying the property. The Respondent heard nothing further until she managed to get a hold of the Applicant on 10th January 2024. They confirmed that they had purchased the property before Christmas and said that somebody would be in touch. The Respondent was then contacted by Ms Hazlett, who told her that she was managing the property. She came out to the property and met with the Respondent. She told the Respondent that the Applicant was planning on refurbishing the property and selling it. Ms Hazlett had said that a lease would be sent out to the Respondent. However when the Respondent advised the local authority of this they advised her not to sign a new lease as she may compromise her tenancy rights. The local authority had a shortage of accommodation and advised her to stay in the property for as long as she could.

- 12 The Respondent confirmed that the rent for the property was now being paid by the housing element of universal credit, in the sum of £670 per month. There were also payments being made towards the arrears, which had accrued between February and April 2024 when her benefits were not being paid.
- 13 The Respondent confirmed that she was in her 60s and resided alone, although her grandchildren would come and stay at weekend. She had mobility problems following a previous accident. She had been in a wheelchair for approximately five years but had since regained her ability to walk, albeit with some difficulty. She was unemployed as a result of her disability. She had come to the realisation that the property was no longer suitable for her. There were stairs which were difficult to manage and problems with parking. The Respondent felt like she was in limbo. She had been waiting to move out of the property for nearly two years now. The local authority kept “kicking the can down the road” with regard to rehousing. The Respondent had submitted a housing application but the local authority had told her that this would not be progressed until an eviction order was granted by the Tribunal. The property was just about livable, with the Applicant having carried out works such as installing smoke and heat detectors. However the Respondent acknowledged that it would be better if an eviction order was granted with sufficient time allowed for her to obtain rehousing with the local authority in accommodation that was more suitable to her needs. She would not object to the making of an order in those circumstances.
- 14 Ms Hazlett confirmed that the local authority had been in touch with her and were keen to rehouse the Respondent. She acknowledged that it was not a good situation. The house was unsuitable for the Respondent and she would be in a better position if she were to be rehoused by the local authority. Ms Hazlett had no comments regarding a possible suspension of the enforcement of an eviction order.
- 15 The Tribunal held a short adjournment to deliberate, during which time the parties left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

- 16 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing (Tenancies) (Scotland) Act 2016 and the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017:-

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

- 17 The Respondent took up occupation of the property in March 2020 under a private residential tenancy with the former owner.
- 18 The Applicant purchased the property on or around November 2023.
- 19 The tenancy between the parties is a private residential tenancy under section 1 of the 2016 Act.
- 20 On 2 February 2024, the Applicant sent a notice to leave to the Respondent by email. The Respondent had consented to communication by email.
- 21 The notice to leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 22 The Applicant has title to sell the property and intends to do so within three months of the Respondent ceasing to occupy, and following refurbishment.

- 23 The Respondent is in her 60s. The Respondent has mobility issues following injuries sustained in a car accident.
- 24 The Respondent resides alone.
- 25 The property is no longer suitable for the Respondent's needs.
- 26 The Respondent has applied for rehousing with the local authority. The making of an eviction order will assist in progressing the Respondent's application.

Reasons for Decision

- 27 The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. Based on the submissions made by the parties at the CMD the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed.
- 28 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 Tribunal was satisfied that the Notice to Leave complied with the provisions of sections 54 and 62 of the 2016 Act and therefore that application could be entertained.
- 29 The Tribunal then considered whether ground 1 had been met. The Tribunal was satisfied that it could make relevant findings in fact in this regard based on the application paperwork and the submissions from the parties at the CMD.
- 30 The Tribunal therefore accepted that the Applicant intended to sell the property and had title to do so. The Tribunal also accepted that they intended to do so within three months of an eviction order being granted. The Respondent had not disputed their intention in this regard.
- 31 The Tribunal thereafter considered the reasonableness of making an eviction order.
- 32 In terms of factors relevant to the assessment of reasonableness, the Tribunal took into account the fact that the Applicant, as the registered owner of the property, were entitled to sell the property if they so wished. The Respondent had been advised of their intention in January 2024, providing her with ample notice. The Tribunal gave significant weight to this.
- 33 The Tribunal also gave significant weight to the fact that the Respondent had stated that the property was no longer suitable for her needs. She was keen for matters to be brought to a conclusion, having been prepared to leave the property since she received the initial notice from the former owner. She wished to obtain a property that would be better suited to her needs, and the making of

an eviction order would assist her in this regard by ensuring her application for housing with the local authority would be given priority. Accordingly, whilst the Tribunal had concerns about the vulnerability of the Respondent in view of her age and disability, ultimately she would be placed in a better position in terms of rehousing were an eviction order to be granted. She had acknowledged this herself at the CMD.

- 34 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.
- 35 The Tribunal therefore determined to make an eviction order. However, taking into account the scarcity of local authority accommodation and having regard to the Respondent's health, the Tribunal determined to suspend the enforcement of said order for a period of three months to allow sufficient time for the Respondent to obtain suitable alternative accommodation.
- 36 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

18 November 2024

Legal Member/Chair

Date