



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/24/0292

Re: Property at 1 Goldcrest Crescent, Lesmahagow, ML11 0GU (“the Property”)

Parties:

Keam Homes (Scotland) Ltd, 14 City Quay, Dundee, DD1 3JA (“the Applicant”)

Miss Amy Bowman and Mr James Stephens, 1 Goldcrest Crescent, Lesmahagow, ML11 0GU (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of James Stephens)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against James Stephens for possession of the Property at 1 Goldcrest Crescent, Lesmahagow, ML11 0GU under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by James Stephen. The order will include a power to Officers of Court to eject James Stephen and family, servants, dependants, employees, and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant based the application on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. At the Case Management Discussion held on 9 July 2024, Mr Stephens consented to the Order for eviction being granted against him. It was causing him a great deal of stress and he did not want to live there any longer. The Applicant's letting agent, Ms Laing from Dyer and Company Property submitted that the Order should also be granted against Ms Bowman as the tenancy agreement between the Applicant and the Respondents had not been terminated as both Respondents had not given notice. This was disputed by Ms Hamilton from Complete Clarity solicitors and Simplicity Legal who appeared for Miss Bowman. She submitted the action against Miss Bowman should be dismissed as incompetent in the circumstances. Accordingly, the Tribunal continued the case to a Hearing to determine:-
 - i. Whether the Respondents gave notice of their intention to bring the joint tenancy to an end in terms of sections 48 and 49 of the Private Housing (Tenancies) (Scotland) Act 2016 and
 - ii. If so, whether the action against Miss Bowman was incompetent.

The Tribunal also confirmed in its Note from the CMD that it expected parties to be in a position to make submissions as to whether in the circumstances it was reasonable to evict. The Note from the CMD is referred to.

3. On 21 October 2024, Miss Bowman's solicitors Complete Clarity solicitors and Simplicity Legal submitted an affidavit provided by Miss Bowman's mother, Denise McAllister. In short, this set out the circumstances leading to Miss Bowman leaving the Property on 1 October 2023 and the circumstances thereafter including the serving of the Notice to Leave and the impact on Miss Bowman's mental health.
4. On 8 November 2024, the Applicant's new letting agent Lyndsay Yuill from Rent Locally submitted written representations and in particular referred to the email correspondence between the Respondents and the previous letting agents Dyer and Co of 8 and 10 October 2023. This correspondence had previously been lodged by Miss Bowman's solicitor prior to the CMD of 19 July 2023. Ms Yuill also lodged a rent statement, a Lease Ledger, the sole Letting Agreement between Rent Locally and the Applicant, a copy of the Note from the CMD, a letter from Complete Clarity solicitors and Simplicity Legal dated 24 October 2024, correspondence with the Tribunal administration, a timeline of events and an opinion letter dated 24 October from Bannatyne Kirkwood France and Company, solicitors.
5. On 16 November 2024 Ms Yuill emailed the Tribunal to advise they had received an anonymous call from a neighbour advising that Mr Stephens was seen packing up two car loads of belongings and removing his dogs from the Property on 9 November 2024, that he had put a note on the door advising he would be back in three days but that he had not returned. She had emailed Mr Stephens but had had no reply.

Hearing

6. The Hearing proceeded by teleconference call on 20 November 2024. Ms Yuill from Rent Locally appeared for the Applicant. Ms Hamilton from Complete Clarity solicitors and Simplicity Legal appeared on behalf of Miss Bowman. Miss Bowman was also in attendance. There was no appearance by or on behalf of Mr Stephens, despite the Hearing starting 10 minutes late to allow him plenty of time to join the call.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 5 April 2023 between the parties, a Notice to Leave dated 20 October 2023, an email from AB Property dated 18 October 2023, a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to South Lanarkshire Council dated 18 January 2024, written submissions on behalf of Miss Bowman together with an unsigned affidavit by Miss Bowman, messages from Miss Bowman to the Applicant's letting agents dated the 8 and 10 October 2023, an email dated the 8 October 2023 from Mr Stephens to the letting agents, written submissions from Mr Stephens, the affidavit provided by Denise McAllister, the rent statement, the Lease Ledger, the sole Letting Agreement between Rent Locally and the Applicant, the Note from the CMD, the letter from Complete Clarity solicitors and Simplicity Legal dated 24 October 2024, the timeline of events and the opinion letter from Bannatyne Kirkwood France and Company. The Tribunal considered these documents.
8. The Tribunal enquired of Ms Yuill as to the current position at the Property. She confirmed that they had received an anonymous call from a neighbour who had seen Mr Stephens load up two car loads of belongings and his dogs on 9 November 2024, that Mr Stephens had put a note on the door saying he would return and that he was again seen on 15 November 2024 loading up another car load of belongings. However no large items of furniture had been seen coming out of the Property which had been let unfurnished. She confirmed the Applicant was seeking an Order for eviction against both Mr Stephens and Miss Bowman. She had no witnesses and relied on the letter from Bannatyne Kirkwood and France, but could if necessary get Ms Laing from Dyer and Co to dial into the call if required.
9. The Tribunal then enquired as to whether Ms Hamilton had had an opportunity of considering the submissions lodged on behalf of the Applicant and in particular the letter of opinion from Bannatyne Kirkwood France. She confirmed she had. Her position was that an Order for eviction against Miss Bowman should not be granted in all the circumstances.
10. The Tribunal advised parties that it had had an opportunity of considering the letter from Bannatyne Kirkwood France and the documents lodged. Being mindful of the overriding objective and to avoid delay the Tribunal confirmed it

was wholly in agreement with the Applicant's position in relation to termination as set out in Bannatyne Kirkwood France's letter, namely that despite the emails of 8 and 10 October 2023, the tenancy agreement had not been terminated in terms of Sections 48 and 49 of the Private Housing (Scotland) Act 2016 ("the 2016 Act") with reference to Section 78(3) of the 2016 Act and that the action against Miss Bowman was competent in the circumstances. The Tribunal accepted the reasons why the Applicant wanted to sell the Property as it had been fully addressed on these reasons at the CMD. The Tribunal also accepted Miss Bowman had left the Property on or about 1 October 2023 which was corroborated by Mr Stephens at the CMD and in his submission and by Miss Bowman and Ms McAllister's affidavits. However, the Tribunal had also to be persuaded that in Miss Bowman's case in particular that it was reasonable to evict.

11. The Tribunal invited Ms Yuill to address them on the reasonableness of granting an Order for eviction against Miss Bowman. Ms Yuill referred the Tribunal to page 5 of Bannatyne Kirkwood France's letter and to a paragraph on the competency of the action against Miss Bowman. The Tribunal emphasised to Ms Yuill that it had no issue with the competency of the action against Miss Bowman, that the action in the circumstances was competent against her, but that it had to be satisfied that it was reasonable to grant an order to evict against her in the circumstances where she had left the Property 13 months previously. The Tribunal referred Ms Yuill to the wording of Ground 1 of schedule 3 of the 2016 Act relating to the fact the Tribunal also had to be satisfied it was reasonable to evict. She again referred to the same paragraph of Bannatyne Kirkwood France's letter. The Tribunal again confirmed it had no issue with that but that the letter did not address reasonableness. Ms Yuill made no submissions on the reasonableness of an order being granted against Miss Bowman.
12. In response, Ms Hamilton advised she had listened to what the Tribunal had to say with regards to termination and competency and was intent to proceed to address the Tribunal on whether it was reasonable to grant an order against Miss Bowman. She submitted that at the time Miss Bowman fled the Property in October 2023 she was in a state of hysteria and was not paying attention to the specific wording of the emails with Dyer and Co. She had tried to resolve matters with Dyer and Co. She had wanted out of the Property and had no intention of going back. She had suffered greatly as a result of the whole circumstances and wanted to be in a position where she would never have to deal with Mr Stephens. In the circumstances it was not reasonable to grant an order against Miss Bowman.
13. The Tribunal asked Ms Yuill if she had any further submissions to make. Ms Yuill explained she was sympathetic to Miss Bowman's position. All her client wanted was to ensure the tenancy came to an end so they could sell the Property. The Tribunal explained that the order, even if just granted against Mr Stephens would terminate the tenancy.

Findings in Fact

14. The Applicant is the owner and Landlord of the Property.
15. The Applicant is entitled to sell the Property.
16. The Applicant and the Respondents entered into a Private Residential Tenancy in relation to the Property on 5 April 2023. The Applicant's letting agent at the time were Dyer and Co.
17. The Respondents were joint tenants of the Property and were in a relationship.
18. The Respondents' relationship thereafter broke down. Miss Bowman left the Property on or about 1 October 2023. Mr Stephens continued to live in the Property alone.
19. On 8 October 2023 Mr Stephens sent an email to Dyer and Co with regards to the joint tenancy with Miss Bowman. He stated *"We have agreed to terminate any contractual ties of Miss Bowman in the property and subsequently, her name be removed from the tenancy agreement. I would appreciate if you could advise me on your policy/what the next steps are in terms of my part of the agreement, as I'm unsure where I stand with this and yet to take advice due to services being closed"*.
20. On 8 October 2023 Miss Bowman also sent an email to Dyer and Co which stated *" With regards to Mr Stephens' email, I, Amy Bowman, joint tenant of 1 Goldcrest Crescent, Lesmahagow, South Lanarkshire, ML11 0GU hereby give my consent and notice to the ending of the joint tenancy agreement on 8/10/23"*.
21. On 10 October 2023 Miss Bowman emailed Dyer and Co again and stated *"Could I have an email confirming acknowledgement of myself and Mrs Stephens ending the joint tenancy which began on 8/10/23"*.
22. On 10 October 2023 Dyer and Co emailed the Respondents and advised the Applicant did not want to relet the Property and wished to sell the Property. It further stated *" Since we cannot offer a new tenancy in just one name then both parties will still be in a joint lease until both tenants have agreed an exit date on the property. We cannot remove a name from a PRT Tenancy, a new lease would need to be granted and since we do not have permission to continue letting this property, we cannot proceed with a new lease"*.

23. The Applicant intends to sell the Property within three months of gaining possession of the Property. The Applicant has a variable rate mortgage and holding the Property is not financially viable.
24. Dyer and Co received a desktop valuation of the Property from AB Property Consultants on 18 October 2023.
25. Dyer and Co served a Notice to Leave on the Respondents by email on 20 October 2023. The Notice to Leave required the Respondents to leave the Property by 15 January 2024. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
26. Mr Stephens did not vacate the Property on 15 January 2024.
27. On or about 16 November 2024 the Applicant's letting agent Rent Locally received an anonymous call from a neighbour advising that Mr Stephens appeared to have vacated the Property on 9 November 2024 and had put a note on the door stating that he would be back in 3 days. Mr Stephens has since returned and removed items from the Property. Rent Locally have emailed Mr Stephens to confirm whether he has removed. Mr Stephens has not responded.
28. Dyer and Co, the Applicant's previous letting agent served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on South Lanarkshire Council on 18 January 2024.

Findings in fact and in law

29. The Respondents did not give the required notice to terminate the tenancy in terms of Sections 48 and 49 of the 2016 Act. The Action against both Respondents is competent.
30. The Tribunal is satisfied that the facts required in Ground 1 of schedule 3 of the 2016 Act have been established.
31. The Tribunal is satisfied that it is reasonable to make an order for eviction against Mr Stephens. The Tribunal is not satisfied that it is reasonable to make an order for eviction against Miss Bowman.

Reasons for Decision

32. Sections 48 and 49 of the 2016 Act set out the statutory requirements for termination by a tenant. Section 48 (1) and (2) provides –

“(1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2)A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end”.

33. In the case of a joint tenancy both tenants must give notice that they wish to terminate the tenancy due to the definition of “tenant” in Section 78(3) of the 2016 which provides that-

“In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise”.

34. Section 49 sets out the requirements for the notice to be given by the tenant-

“(1) A notice fulfils the requirements referred to in section 48(1) if—

(a) it is given—

(i) freely and without coercion of any kind,

(ii) after the tenant begins occupying the let property,

(b) it is in writing, and

(c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.

(2) A notice is to be regarded as fulfilling the requirements referred to in section 48(1), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.

(3) In subsection (1)(c), “the minimum notice period” means a period which—

(a) begins on the day the notice is received by the landlord, and

(b) ends on the day falling—

(i) such number of days after it begins as the landlord and tenant have validly agreed between them, or

(ii) if there is no such valid agreement, 28 days after it begins.

(4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—

(a) is not in writing, or

(b) was entered into before the tenancy became a private residential tenancy.

(5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those person”

35. The emails sent by the Respondents to the Applicant’s letting agents on 8 October 2023 do not comply with the statutory requirements set out in Section 49. Neither email gives the minimum period of notice or the date the tenancy will end. Further the wording of the email of 8 October 2023 by Mr Stephens does not state that he wants to terminate the tenancy, but requests that Miss Bowman’s name be removed from the tenancy. He then enquires about what should happen to his “part of the agreement”. Whilst the Tribunal accepts that both tenants may have had the intention of giving notice to terminate the tenancy, their emails did not satisfy the statutory requirements

set out in Section 49. That being the case, the tenancy was not terminated. The action against both Respondents is accordingly competent.

36. The Tribunal considered the issues set out in the application together with the documents lodged by both parties, the written submissions from both parties and the oral submissions made by both parties at the CMD and at the Hearing.

37. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1 of Schedule 3 which provides:-

“(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

(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.”

38. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave or unless it is not in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

39. Notice to Leave is defined in terms of Section 62 (1) of the 2016 Act as follows-*“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.”*

40. In this case the Notice to Leave is in writing and clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. A copy of the desktop valuation was provided. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 15 January 2024. The Notice to Leave was served on the Respondents by email on 20 October 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. In the circumstances the Tribunal is satisfied the Respondents had been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
41. The Tribunal accepted that the Applicant had a variable rate mortgage and that it was no longer financially viable for the Applicant to keep the Property. The Tribunal accepted that the Applicant intended to sell the Property as soon as possible. From the written submissions lodged by Ms Yuill it appeared the Applicant was considering selling the Property even with Mr Stephens being in the Property. The Applicant had a genuine and firm intention to proceed to sell the Property.
42. Accordingly, the Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property.
43. However, Ground 1 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict
44. The leading Scottish authority on reasonableness is the case of *Barclay v Hannah 1947 S.C. 245* at 249 per Lord Moncrieff ; the Tribunal must establish, consider and properly weigh the “*whole of the circumstances in which the application is made*” It may take into account whether the parties' intentions are subjectively reasonable and it must “*objectively balance the rights and interests of both parties*” (*Manson and Downie v Turner (2023) UT 38 at paragraphs 41 and 42*).
45. In the present case it is relevant for the Tribunal to consider the Applicant's legal right to sell the Property. The Tribunal considers the deciding factor to be that the Applicant exercises a right of property, which gives the Applicant the right to

sell the Property. The Tribunal is of the opinion that that right must take precedence.

46. The relevant circumstances on the Respondents' side are differing. In Mr Stephens' case, the Tribunal gave weight to the fact that he had either moved out of the Property recently or was in the course of doing so. Further with reference to Mr Stephens' submissions at the CMD he consented to the Order being granted against him and stated he did not want to live in the Property. In the circumstances the Tribunal considered it was reasonable to grant an Order to evict Mr Stephens.

47. In relation to Miss Bowman's relevant circumstances, the Tribunal accepted the affidavit evidence of Miss Bowman and her mother that she had left the Property in October 2023. The Tribunal accepted that Miss Bowman had no intention of ever going back to the Property. The Tribunal gave great weight to that. Further the Tribunal considered that Miss Bowman's mental health had deteriorated since she had left the Property and considered weight should be given to that in determining reasonableness. The Tribunal considered in the circumstances it was not reasonable to grant an Order to evict Miss Bowman.

Decision

48. The Tribunal granted an Order for repossession against Mr Stephens. 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.

S.Evans

24 November 2024

Legal Member

Date