



**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/24/2156**

**Re: Property at 4 Front Row Croftouterly, Leslie, KY6 3DP (“the Property”)**

**Parties:**

**Mrs Debbie Wardrope Allan, 8 Valley Grove, Leslie, KY6 3BZ (“the Applicant”)**

**Ms Lauren Robertson, 4 Front Row Croftouterly, Lesley, KY6 3DP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.**

**Background**

- 1 By application to the Tribunal dated 7 May 2024 the Applicant sought an eviction order against the Respondent 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 26 January 2024 confirming that proceedings would not be raised any earlier than 24 April 2024 and proof of delivery to the Respondent by Sheriff Officers on 30 January 2024;
  - (ii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 of the application to Fife Council and proof of delivery by email;
  - (iii) Copy letter from FDL Lawyers and Estate Agents confirming receipt of the Applicant’s instructions to sell the property together with the Applicant’s signed acceptance of their terms of business; and

- (iv) Copy letter from the Respondent to the Applicant raising various jurisdictional issues.
- 2 The Tribunal was also in receipt of Title Sheet FFE21368 which confirmed the Applicant to be the registered owner of the property.
- 3 By Notice of Acceptance of Application dated 1 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 (“CMD”) on 11 November 2024. Notification of the CMD 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 On 23 October 2024 the Tribunal received written representations from the Respondent. In summary the Respondent challenged the jurisdiction of the Tribunal to consider the application, stating that the Tribunal lacked any remit to consider counterclaims and therefore there would be a misrepresentation of due process were the Tribunal to determine the application. The Respondent also stated that the claim did not meet the Tribunal’s criteria, without providing any specification as to why she believed this was the case. The Respondent listed various claims she wished to make against the Applicant, but again provided no specification. The Respondent confirmed that it was “our intention to be in attendance at the Case Management Discussion”.

### **Case Management Discussion**

- 5 The CMD took place by teleconference on 11 November 2024. The Applicant was present and accompanied by her husband John Wardrope.
- 6 A female had also joined the call. The Tribunal asked her to confirm her identity. The female advised that she was “the addressee” and was reserving her legal rights. The Tribunal asked if she was the Respondent. The female refused to confirm this, stating again that she was the addressee and was reserving her rights. The Tribunal advised the female that she would be unable to participate in the CMD if she was unwilling to confirm her identity. The Tribunal advised that it would be in her interest to participate, on the basis that the Tribunal could proceed in her absence and could reach a decision on the application at the CMD. The female refused again to confirm her identity, stating that she was making a special appearance on behalf of the addressee who could be the Respondent but was reserving all of her rights.
- 7 The Tribunal advised the female again that it would be in the Respondent’s best interest to participate in the CMD. The Tribunal confirmed that it would hold a short adjournment so that the female could consider her position, and decide whether she was willing to confirm her name. The Tribunal strongly urged her to do so. The Tribunal thereafter adjourned the hearing for a short period.

- 8 Upon resuming the CMD the Tribunal asked the female again if she would confirm her name. She refused to do so. The Tribunal therefore considered that the female had been given sufficient opportunity to confirm her identity to enable her participation in the CMD. The Tribunal could not allow an unknown person to participate on the Respondent's behalf, without confirmation that said person was either the Respondent, or a representative authorised to speak on her behalf. Having noted that the Respondent had been given notification of the CMD under Rule 17(2) of the Rules, and had made written representations, the Tribunal determined to proceed with the CMD in her absence. The female was advised that she could remain on the line as an observer but she would not be able to participate.
- 9 The Tribunal proceeded to hear submissions from the Applicant regarding the application.
- 10 The Applicant advised that she wished to sell the property for financial reasons. She was asking the Tribunal to make an eviction order. She had recently married and had bought a marital home. She had to borrow money from her parents for her share of the deposit. She therefore required to sell the property to release the equity in order to pay her parents back.
- 11 The Tribunal asked the Applicant for her comments on the Respondent's written representations. The Applicant and her husband confirmed that they had carried out repairs and maintenance to the property. However the relationship between the parties had subsequently broken down, and the Respondent had sent text messages asking that they not attend the house. The Respondent had provided them with misleading information about her whereabouts. The Applicant had been more than accommodating with the Respondent and her partner. They had let them off with rent payments on occasion. However the relationship had simply broken down. There had been some heated conversations over unpaid rent. However the Applicant stressed that the reason for the application was the requirement to sell the property in order to pay her parents back.
- 12 In response to questions from the Tribunal the Applicant confirmed that there was around £40,000 of equity in the property. She confirmed that there had been rent arrears on the account of approximately £1200. The Tribunal asked about the Respondent's personal circumstances. The Applicant advised that the Respondent resided in the property with her partner and her two children.
- 13 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**

- 14 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**

- 15 The Applicant and the Respondent entered into a tenancy agreement which commenced on 7 February 2022.
- 16 The tenancy between the parties is a private residential tenancy under section 1 of the 2016 Act.
- 17 On 30 January 2024, the Applicant served a notice to leave on the Respondent by Sheriff Officers.
- 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 and intends to do so within three months of the Respondent ceasing to occupy.
- 20 The Applicant is recently married. The Applicant and her husband have purchased a marital home.

- 21 The Applicant required to borrow funds from her parents to pay her share of the deposit for the marital home.
- 22 The Applicant requires to sell the property in order to release equity and repay her parents.
- 23 The Respondent resides in the property with her partner and her two children.
- 24 The relationship between the Applicant and the Respondent has broken down.
- 25 There are rent arrears outstanding of approximately £1200.

### **Reasons for Decision**

- 26 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 contrary to the interests of the parties. Based on the submissions made 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. The Tribunal had regard to the Respondent's written representations which challenged the jurisdiction of the Tribunal to consider the matter. The Tribunal did not however accept this argument. It was clear that the Tribunal could consider an application for an eviction order in relation to a private residential tenancy under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent had also challenged the validity of the application but had provided no specification regarding this. She had not participated in the CMD therefore the Tribunal had been unable to question her further to confirm whether she had any stateable defence to the application. The Tribunal therefore concluded that it would be able to make a decision at the CMD, and that would be in accordance with the Tribunal's overriding objective to avoid delay so far as compatible with proper consideration of the issues in this case.
- 27 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.
- 28 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 Applicant at the CMD.
- 29 The Tribunal therefore accepted that the Applicant intended to sell the property and had title to do so. The Tribunal also accepted that she intended



to do so within three months of an eviction order being granted. The Respondent had not disputed her intention in this regard.

- 30 The Tribunal thereafter considered the reasonableness of making an eviction order.
- 31 In terms of factors relevant to the assessment of reasonableness, the Tribunal accepted the Applicant's reasons for selling the property, namely to release the equity in order to repay her parents for money owed following her purchase of a marital home. The Tribunal found the Applicant to be credible in her submissions to the Tribunal on this point. She was open and honest regarding her relationship with the Respondent. The Tribunal had no reason to doubt her account of events. The Tribunal therefore gave significant weight to this as a relevant factor, along with the fact that the Applicant as the owner of the property was entitled to sell the property if she so wished. The Tribunal also gave weight to the fact that there were rent arrears arising from the tenancy, that the relationship between the parties had broken down, and it would likely benefit all involved were the tenancy to come to an end.
- 32 The Tribunal also considered the Respondent's circumstances, noting that she resided in the property with her partner and two children. Whilst the Tribunal had concerns about the risk to the Respondent's children were an eviction order to be granted, the Tribunal was aware from its own knowledge that the local authority would have a duty to provide housing in such circumstances. The Tribunal therefore gave less weight to this as a relevant factor.
- 33 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.
- 34 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

19 November 2024

**Legal Member/Chair**

**Date**