



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/24/2277

Re: Property at 1 Hillview Place, Alexandria, G83 0QD (“the Property”)

Parties:

Mrs Naim Sohail, The Beeches, Smollett Street, Alexandria, G83 0DS (“the Applicant”)

Ms Judith Gulbransen, 1 Hillview Place, Alexandria, G83 0QD (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order, with execution of said order suspended until 6 January 2025.

Background

- 1 By application to the Tribunal 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 section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided:-
 - (a) Written authorisation from the Applicant authorising Ms Nadia Sohail to act as her representative;
 - (b) Copy email correspondence between Nadia Sohail and the Respondent;
 - (c) Copy email correspondence between West Dunbartonshire Council and Nadia Sohail;

- (d) Notice to leave dated 11 December 2023 together with proof of delivery by email;
- (e) Section 11 notice to West Dunbartonshire Council together with proof of delivery by email; and
- (f) Copy letter from the Applicant to her son confirming he would be residing at the property indefinitely.

The Applicant advised that she did not have a copy of the tenancy agreement as this had been retained by her solicitor for the purposes of dealing with the estate of the Applicant's late husband.

- 2 By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The application was therefore referred to a Case Management Discussion ("CMD") to take place by teleconference on 28 November 2024. Notification of the CMD was given to parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by Sheriff Officers on 23 October 2024.
- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

The Case Management Discussion

- 4 The CMD took place on 28 November 2024. The Applicant was represented by Ms Nadia Sohail. She confirmed that she was authorised to appear on behalf of the Applicant. The Respondent was also in attendance. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
- 5 The Tribunal heard submissions from Ms Sohail. She confirmed that the Applicant was her mother who was looking to provide accommodation to her younger brother and his family for an indefinite period, or until the property was no longer required. Her brother and his family were currently living with the Applicant and space was tight. The relationship between the Applicant and her brother had deteriorated. Her brother had moved out temporarily to live with his uncle in Cambuslang however he had been asked to leave shortly after and had returned to the Applicant's home. Ms Sohail explained that her brother and his family needed their own space. They could not afford to buy a property at the moment and intended on staying in the Applicant's property until such time as they saved a deposit. This would likely take around 4 or 5 years.
- 6 Ms Sohail confirmed that the notice to leave was sent to the Respondent on 11 December 2023. As far as she was aware the notice was correct and complete. The Respondent had been given until 6 March 2024 to leave the property. When the time came for the Respondent to move out she had advised Ms

Sohail that she needed more time to get a removal van. Ms Sohail had therefore given her until 15 March 2024. Ms Sohail understood however that the Respondent did not want another private let as she did not want to be at risk of eviction again. The Respondent had applied to the council but had been told that they would not help her until she was made homeless and evicted from the property. The Respondent had therefore refused to move. Ms Sohail's brother and his family were struggling. The situation was affecting their mental health, as well as the mental health of the Applicant and Ms Sohail.

- 7 Ms Sohail confirmed that she had sent tenancy references to the council and other agencies to try and assist the Respondent. She clarified that the references to 1 Govan Drive and 1 Hillview Place both related to the same property. 1 Hillview Place did not always come up in postal addresses. She confirmed that her brother was 28, his wife was 27 and they resided with their young son aged 15 months. Her younger brother was in employment but his wife was not. They could not afford to buy somewhere or move out. Ms Sohail understood that they had approached the council for assistance but she did not know the outcome of that process. Her mother had a series of other properties but this property had been selected due to its proximity to her brother's employment. She confirmed that the property was a one bedroom but was considered suitable for her brother's family at the current time. His son slept in the room with his parents. Her mother also owned a four bedroom property which was too big for her brother's needs, along with several other one bedroom properties in the area. Ms Sohail explained that there were also repairs required to the property, including a replacement bathroom, which was another reason why it had been selected as suitable for her brother and his family.
- 8 The Respondent advised that she had gone straight to the council when she received the notice to leave. She was completely fine with the Applicant getting the property back. She agreed that there had been ongoing issues with repairs. She had asked for evidence of the repairs to give to the council in order to assist with her application for housing, but the Applicant had not provided this, albeit she had received other documentation to support her application. The Respondent confirmed that she did not want another private let. The situation was causing her significant stress and anxiety. Her alopecia had returned. She wanted the situation to be resolved in the best way for both parties. The council had told her that they could only assist her with housing if the Tribunal made an eviction order. The Respondent confirmed that she resided in the property on her own. She did not oppose the eviction order, but would appreciate an extension over the festive period.
- 9 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the proceedings and confirming its decision.

Relevant Legislation

- 10 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 5

(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

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

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

Findings in Fact and Law

11 The Applicant and Respondent entered into a tenancy agreement which commenced on 18 April 2018.

12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 13 On 11 December 2023 the Applicant sent a notice to leave to the Respondent by email. The Respondent has consented to the use of email for communications under the said tenancy agreement.
- 14 The notice to leave included ground 5 and stated that proceedings for possession would not be raised any earlier than 7 March 2024.
- 15 The Applicant requires possession of the property so that her son can take up residence at the address.
- 16 The Applicant's son is aged 28. He resides with his wife aged 27 and his son aged 15 months at the Applicant's property.
- 17 The Applicant's property is not suitable for her son and his family. The relationship between the Applicant and her son's family has broken down.
- 18 The Applicant has other rental properties including a four bedroom property and several one bedroom properties.
- 19 The property is located in close proximity to the Applicant's son's place of employment. The property is considered most suitable for the needs of the Applicant's son and his family at the present time.
- 20 The property requires repair. In particular the bathroom requires to be replaced.
- 21 The Respondent has been in dialogue with the local authority. The local authority has advised that the Respondent cannot be rehoused until such time as an eviction order has been granted by the Tribunal.
- 22 The Respondent resides in the property alone. The Respondent has suffered with anxiety as a result of the present situation, which has exacerbated her alopecia.
- 23 The Respondent does not oppose the eviction order. The Respondent wishes to obtain secure accommodation with the local authority. The Respondent does not want another private let.

Reasons for Decision

- 24 The Tribunal reached its decision taking into account the application paperwork and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it had sufficient information to reach a decision following the Case Management Discussion and that it would not be contrary to the interests of the parties to do so.

- 25 The Applicant had not provided a copy of the tenancy agreement in this case. However, the Tribunal was satisfied based on the submissions from the parties at the CMD that there was a private residential tenancy in place between the parties which commenced on 18 April 2018. The Respondent had not sought to challenge this. The Tribunal further accepted that the Respondent had consented to the use of email for any communications required under the tenancy agreement. This was supported by the correspondence that had been submitted by the Applicant. It was clear that email was the preferred choice of communication between the parties. Again, this was not challenged by the Respondent.
- 26 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 5 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.
- 27 The Tribunal then considered whether ground 5 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 Ms Sohail and the Respondent at the CMD.
- 28 The Tribunal was therefore satisfied that the Applicant's son and his family intended on moving into the property, and residing there for at least three months. The Respondent did not dispute this and the Tribunal considered that a credible explanation had been put forward by the Applicant as to the reasons why her son required the property as his principal home.
- 29 The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances of this case to grant an eviction order.
- 30 It was clear that the Respondent was intent on leaving the property, and was awaiting the outcome of the Tribunal proceedings in order to progress her application for housing with the council. She was adamant that she no longer wished a tenancy in the private sector. This was a relevant factor in terms of reasonableness to which the Tribunal applied significant weight. The Tribunal was aware that the council would have a statutory obligation to offer assistance to the Respondent in this regard, and that the making of an eviction order would prioritise her application for rehousing. This allayed any concerns the Tribunal had about the impact of an eviction order on the Respondent.
- 31 The Tribunal took into account the circumstances surrounding the Applicant's relationship with her son, which had deteriorated as a result of living together in close quarters, and her son's requirement to be located in close proximity to his place of employment. The property would be suitable for his needs in that respect. Whilst the Tribunal had some concerns about the suitability of a one

bedroom family for a young family, Ms Sohail had been clear that the property was considered appropriate for the Applicant's son and his family at the present time.

- 32 The Tribunal also gave weight to the ongoing impact on both the Applicant and the Respondent as had been outlined in their submissions at the CMD. The Tribunal accepted that both would have suffered a deterioration in their mental health due to the stress of the situation. The Tribunal considered that it would be in the best interests of all involved for matters to be brought to a conclusion.
- 33 Accordingly, having taking those factors relevant to the assessment of reasonableness into account the Tribunal concluded that the balance weighed in favour of making an eviction order and the provisions of ground 5 of schedule 3 of the 2016 Act had been met. However, in view of the upcoming festive period, and in order to give the Respondent sufficient time to obtain rehousing with the council, the Tribunal determined to suspend execution of the eviction order until 6 January 2025.
- 34 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

Legal Member/Chair

Date 28 November 2024