



**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/24/2340**

**Re: Property at 26A New Wynd, Montrose, DD10 8RB (“the Property”)**

**Parties:**

**GG-293-235, 1 Lyric Square, London, W6 0NB (“the Applicant”)**

**Mr Ross MacLean, 26A New Wynd, Montrose, DD10 8RB (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Gordon Laurie (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 22 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) Private residential tenancy agreement between the Respondent and AKA Property Limited dated 5 and 6 August 2019;
  - (ii) Notice to leave dated 21 February 2024 confirming that proceedings would not be commenced any earlier than 19 May 2024 together with proof of delivery by email;
  - (iii) Section 11 notice to Angus Council together with proof of receipt;
  - (iv) Rent statement and excerpts from tenancy record;
  - (v) Copy landlord request for direct deductions from universal credit dated 30 November 2019;

- (vi) Email from Walmac Property Limited confirming instructions to sell the property; and
  - (vii) Written authorisation from the Applicant giving consent for the Applicant's representative to act for them in the proceedings before the Tribunal.
- 2 The Tribunal was also in receipt of Title Sheet ANG92846 which confirmed the Applicant had taken entry of the property on 31<sup>st</sup> March 2023 and was the heritable proprietor.
  - 3 By Notice of Acceptance of Application 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 20 November 2024. Notification of the CMD was served upon the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.
  - 4 No written representations were received from either party in advance of the CMD.

### **Case Management Discussion**

- 5 The CMD took place by teleconference on 20 November 2024. The Applicant was represented by Miss Laura Wheelan, an employee of the Applicant's representative. The Respondent was not in attendance. The Tribunal noted that he had been given notification of the CMD under Rule 17(2) of the Rules and had been provided with the application paperwork. The Tribunal therefore determined to proceed in his absence.
- 6 The Tribunal explained the legal test that the Tribunal required to apply in terms of ground 1 and proceeded to hear submissions from Miss Wheelan regarding the application. For the avoidance of doubt the following is a summary of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 Miss Wheelan confirmed that her agency had taken over the management of the property in April 2023. The property was a one bedroom property in Montrose. The Applicant had purchased the property with the Respondent in situ as tenant. There had been difficulties with the tenancy from the start. The Respondent had delayed in changing his universal credit payment details and had to be chased by Miss Wheelan. The Applicant had now decided that they wanted to sell the property. They had bought it as an investment but having had difficulties with the tenancy, including rent arrears and problems with gaining access, they no longer believed it was viable. The property did not have a mortgage over it. Miss Wheelan was unaware of any other rental properties that the Applicant owned. This was the only property that her agency managed for them. Miss Wheelan confirmed that a buyer had been lined up to purchase the property earlier in the year, but they were looking for vacant possession and the sale had fallen through because of the requirement to obtain an order from the Tribunal. Miss Wheelan confirmed that WalMac Property Services had been

engaged by the Applicant to sell the property once the Respondent had vacated and had been involved with the prospective buyer.

- 8 With regard to the Respondent's personal circumstances Miss Wheelan advised that he was a single male who lived alone. She had never met him so did not know his exact age but on the basis that he had been in the property since 2019 she imagined he would be in his 20s or 30s. Her colleague had been in contact with him about the eviction briefly. The Respondent was aware of the Tribunal proceedings. He had asked her colleague to let him know if he needed to leave. Miss Wheelan explained that it was quite difficult to communicate with the Respondent. There had been a leak a few weeks ago and he had responded to her via email however that wasn't always the case. She had drawn from the conversation that had taken place between the Respondent and her colleague that he would not be averse to moving out. She confirmed that he had not approached her agency for help in this regard, nor had she received any request for references on his behalf. She did not know if he had spoken to the council.
- 9 The Tribunal queried why the email address noted on the tenancy agreement for communication with the Respondent differed slightly from the email address to which the notice to leave had been sent. Miss Wheelan advised that there was an error in the email address in the tenancy agreement. She did not know why. She confirmed that the Respondent had communicated with her via the email address used for the notice to leave. That was the email address on their system. She advised that the Respondent would have access to the system and would have been able to update his details if need be.
- 10 The Tribunal noted that Miss Wheelan had indicated that Walmac Property Services had been involved with the prospective buyer at the beginning of the year. However the email from them that had been produced with the application confirming the instruction to sell was dated July 2024. Miss Wheelan advised that Walmac Property Services had been involved with the property since the beginning of the tenancy. They had in fact sourced the property for the Applicant. The email was dated July 2024 because that was when Miss Wheelan had been asked by the Tribunal to produce evidence to support the ground for possession.
- 11 The Tribunal expressed concerns that the Applicant may be trying to use ground 1 to circumvent the other issues, such as the rent arrears. Miss Wheelan assured the Tribunal that this was not the case as far as she was concerned. She had been asked to sell the property. The Applicant was based abroad. They had purchased the property with a view to keeping it long term. Given the issues with the tenancy they had since decided that they no longer wanted the property. It had not turned out as they had expected. Miss Wheelan confirmed that the reference to the difficulties they had faced with the tenancy were to give context to the decision to sell. She confirmed that the arrears were fairly low, amounting to £668.06. They would likely reduce at the end of the month when the next payment to the account was due. The Applicant was not

relying upon the arrears as a ground for possession, they simply did not view the property as a good investment. They wanted to sell it and move on.

- 12 The Tribunal held a short adjournment to deliberate, during which time Miss Wheelan left the call, before resuming the Case Management Discussion and confirming its decision.

### **Relevant Legislation**

- 13 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**

14 The Respondent entered into a tenancy agreement with AKA Property Limited in respect of the property dated 5 and 6 August 2019, which commenced on 5 August 2019.

15 The Applicant purchased the property on or around 31 March 2023. The Applicant became the landlord under the terms of the said tenancy agreement.

- 16 The tenancy between the parties is a private residential tenancy under section 1 of the 2016 Act.
- 17 On 21 February 2024, the Applicant sent a notice to leave to the Respondent by email. The notice to leave stated that proceedings for possession would not be raised any earlier than 19 May 2024.
- 18 In terms of Clause 3 of the said tenancy agreement the Respondent consented to the use of email for the delivery of notices. The notice to leave was sent to the Respondent's preferred email address that he uses to communicate with the Applicant's representative.
- 19 The notice to leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 20 The Applicant has title to sell the property and intends to do so within three months of the Respondent ceasing to occupy. The Applicant has instructed Walmac Property Services to act for them in respect of the sale.
- 21 The Applicant bought the property with assistance from Walmac Property Services as an investment.
- 22 The Applicant no longer views the property as a good investment due to difficulties that have arisen during the tenancy which include arrears of rent and access issues. As at the date of this decision arrears of rent in the sum of £668.06 are outstanding.
- 23 The Applicant is based abroad. The Applicant's representative does not manage any other properties on behalf of the Applicant.
- 24 The Respondent is a single male who resides alone.
- 25 The Respondent is in receipt of universal credit with a housing element.

### **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. The Respondent had been given notification of the CMD but had chosen not to participate, nor make any written representations regarding the application. The Tribunal did not therefore identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed.



- 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 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 Miss Wheelan 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 they intended to do so within three months of an eviction order being granted. The Respondent had not disputed their intention in this regard.
- 30 The Tribunal thereafter considered the reasonableness of making an eviction order which required the Tribunal to identify those factors relevant to an assessment of reasonableness.
- 31 The Tribunal had little information regarding the Respondent's circumstances in view of the fact that he had not participated in the proceedings. He had not produced anything to contradict the information provided by the Applicant. The Tribunal was therefore satisfied that it could accept the Applicant's account of the circumstances surrounding the tenancy as fact.
- 32 The Tribunal therefore accepted that the Respondent was a single male who resided alone. There were no dependents who would be at risk of homelessness were an eviction order to be granted. The Tribunal had no information regarding any health issues or vulnerabilities on the part of the Respondent, but found it reasonable to assume that he would be in his 20s or 30s based on the information provided by Miss Wheelan.
- 33 The Tribunal was also satisfied based on Miss Wheelan's submissions at the CMD that the Applicant had changed their position regarding the property based on the difficulties they had faced with the Respondent, and no longer viewed it as a long term investment. The Tribunal accepted that the Respondent had been challenging to deal with as a tenant. The Tribunal believed this to be a credible explanation for the Applicant's decision to sell the property, which they were entitled to do as the heritable proprietor.
- 34 Accordingly having taken into account these factors as relevant to reasonableness the Tribunal ultimately concluded that the balance weighed in favour of making an eviction order and that ground 1 had been met.
- 35 The Tribunal therefore made 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.

# R.O'hare

22 November 2024

Legal Member/Chair

\_\_\_\_\_  
Date