



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/24/3040

Re: Property at 15 Princess Crescent, Dyce, Aberdeen, AB21 7JU (“the Property”)

Parties:

Mr David Gillespie, Mrs Caroline Gillespie, 25938 Celtic Terrace Drive, Katy, Texas, 77494, United States (“the Applicant”)

Miss Dorota Zemlo, 15 Princess Crescent, Dyce, Aberdeen, AB21 7JU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution suspended for a period of two months.

Background

- 1 By application to the Tribunal dated 3 July 2024 the Applicants sought an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). In support of the application the Applicants submitted:-
 - (a) Private residential tenancy agreement between the parties dated 1 July 2021;
 - (b) Notice to leave dated 2 April 2024 together with proof of service by email;
 - (c) Section 11 notice to Aberdeen City Council together with proof of service by email;

- (d) Copy letter from the Applicants confirming their intention to sell the property;
and
 - (e) Copy letter from Peterkins confirming receipt of the Applicant's instructions to market the property for sale.
- 2 The Tribunal was also in receipt of Land Certificate ABN48362 which confirmed the Applicants as the registered owners of the property.
- 3 By Notice of Acceptance of Application dated 30 July 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion ("CMD") was therefore assigned for the 5 December 2024 to take place by teleconference. Notification was given to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by Sheriff Officers on 25th October 2024.

Case Management Discussion

- 4 The CMD took place on 25 November 2024. The Applicants were represented by Mr Martin Kingdon of Peterkins. The Applicants themselves were not in attendance. The Respondent was present and accompanied by her daughter Olivia Zemlo who assisted with translation where required.
- 5 The Tribunal explained the purpose of the CMD and the legal test to be applied. Parties were invited to make written submissions regarding the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
- 6 Mr Kingdon advised that he had been contacted by the Applicants in April 2024. They had advised him of their intention to sell the property. There had been no issues with the conduct of the tenancy but the Applicants now resided overseas. They did not intend on returning to the UK and had no future use for the property. There was a mortgage over the property and the current term was due to expire in quarter 2 of 2025. The Applicants were therefore concerned about increased mortgage costs. They had taken the decision to sell the property and a notice to leave had been issued. Mr Kingdon confirmed that the Applicant had instructed his sales department to proceed with the sale of the property as soon as vacant possession was obtained.
- 7 Mr Kingdon advised that he understood the Respondent had been in touch with the local authority as he had received an email from them with regard to the proceedings. The local authority had advised the Respondent to remain in the property until such time as the application was decided by the Tribunal.
- 8 In response to questions from the Tribunal Mr Kingdon advised that this was the only property that the Applicants rent out. There was another property in the family owned by the Applicants' brother which had recently become vacant and the Respondent had been advised of this. Mr Kingdon confirmed that the Applicants had not yet instructed a home report as they were aware the report

had a shelf life, but they had valuations and quotations ready to go for the sale of the property.

- 9 The Respondent, with assistance from her daughter, confirmed that she accepted she needed to move out of the property. She had been in contact with both the local authority and local housing associations but the local authority could not give her the homelessness status that she needed to apply for social housing until such time as an order was granted by the Tribunal. She had looked into properties in the private sector but the rents were not affordable. The Respondent's partner has passed away approximately three years ago. The Respondent resided in the property with her daughter, her 11 year old son and their dog.
- 10 In response to questions from the Tribunal the Respondent confirmed that she was content for an eviction order to be granted as it would give her homelessness status and she would then have top priority. She would be able to apply to housing associations, as well as the local authority, for accommodation. The Respondent did however wish to request a suspension of the enforcement of the order until the end of January to allow sufficient time for her to obtain another home. The local authority had not given her any timescale for this.
- 11 Mr Kingdon advised that he did not wish to be unreasonable. The Applicants had always acted reasonably regarding the tenancy. He appreciated that it was not an ideal time of year. He would have no difficulty if the execution of the order was suspended to late January and did not think the Applicants would have a problem with that. Mr Kingdon did note that the most recent rent payment had not been received, but that may be because the Tribunal proceedings were ongoing.
- 12 The Tribunal adjourned to deliberate, at which point parties left the call, before resuming the CMD 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:-

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 and Law

- 14 The Applicant and Respondent entered into a tenancy agreement which commenced on 1 July 2021.
- 15 The tenancy was a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 The tenancy agreement provides that any communication under the terms of the lease, including the service of any notices, will be by email.
- 17 On 2 April 2024 the Applicant emailed a notice to leave to the Respondent, to the email address stated in the tenancy agreement. The notice to leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 28 June 2024.
- 18 The Applicants are the registered owners of the property.
- 19 The Applicants reside overseas. The Applicants have no intention of returning to Scotland.
- 20 The Applicants have a mortgage over the property. The current term for the mortgage is due to expire in the second quarter of 2025. The Applicants will likely face an increase in their mortgage costs.
- 21 The Applicants do not have any other rental properties in Scotland.

- 22 The Respondent resides in the property with her daughter, her son aged 11 and their pet dog.
- 23 The Respondent has consulted the local authority with a view to obtaining rehousing. The Respondent has been advised that her application will be given top priority in the event of an eviction order being granted by the Tribunal.
- 24 The Respondent cannot afford a private let in the local area. The Respondent requires to be rehoused in social housing.

Reasons for Decision

- 25 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. Both parties were in agreement to the granting of an eviction order in this case.
- 26 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave which complied with the provisions of section 54 and 62 of the 2016 Act. The Tribunal was also satisfied that the Applicants had title to sell the property, and intended to do so within three months of the Respondent vacating. The Respondent did not dispute this. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 27 The Tribunal accepted the Applicant's reason for terminating the tenancy, namely that they resided overseas and had no plans to return to Scotland. The Tribunal also took into account the fact that the Applicants' mortgage term was shortly due to expire and it could be reasonably assumed that their mortgage payments would increase as a result. The Tribunal found it credible that they would wish to cut ties with their financial interests in the UK on the basis that they would not be returning there in future.
- 28 The Tribunal also had regard to the Respondent's personal circumstances, noting that she resided with her daughters and her son, the latter of whom would be at school in the local area. However, whilst the risk of homelessness to the Respondent's family was a cause of concern, ultimately the overriding factor in this case was the fact that the Respondent did not object to the making of an eviction order, if enforcement was suspended for a period of time. She could not progress her application for rehousing with the local authority without the order in place. It would allow her to pursue other options with local housing associations and the Respondent had been clear that she was not looking at the private sector due to the unaffordability of private rents. The Tribunal was also aware that the local authority would have an obligation to provide the Respondent with emergency housing if that became necessary.

29 Having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that it would be reasonable to make an eviction order in the particular circumstances of this case. However in order to provide the Respondent with sufficient opportunity to progress her applications for housing the Tribunal determined to suspend execution of the order for a period of two months.

30 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

5 December 2024

Legal Member/Chair

Date