



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/24/3066 and FTS/HPC/EV/24/3070

Re: Property at 64 Warddykes Avenue, Arbroath, Angus, DD11 4AW (“the Property”)

Parties:

Mrs Elizabeth Margaret Rintoul Lang, Applebank, West Seaton, Arbroath, DD11 5SB (“the Applicant”)

Ms Ewelina Spurek, 64 Warddykes Avenue, Arbroath, Angus, DD11 4AW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 with execution of said order suspended for a period of three months

Background

- 1 By application to the Tribunal dated 3 July 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”). At the same time the Applicant submitted a separate application seeking an eviction order under Rule 109 of the Rules and ground 12 of Schedule 3 of the 2016 Act. The applications were conjoined as they related to the same tenancy and same parties. In support of the applications the Applicant submitted the following:-

- (i) Private residential tenancy agreement between the parties dated 21 November 2019;
 - (ii) Notice to Leave dated 19 March 2024, confirming that proceedings would not be raised any earlier than 14 June 2024 and proof of delivery to the Respondent by email;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 of the application to Angus Council and proof of delivery by email;
 - (iv) Sale quotation from Thorntons Solicitors;
 - (v) Email from Thorntons Solicitors acknowledging receipt of the Applicant's instructions to sell the property; and
 - (vi) Rent statement.
- 2 The Tribunal was also in receipt of Title Sheet ANG20905 which confirmed the Applicant to be the registered owner of the property.
 - 3 By Notice of Acceptance of Application dated 30 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 19 December 2024. Notification of the CMD was given to the parties in accordance with Rule 17(2) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). Said notification was served upon the Respondent by Sheriff Officers on 12 November 2024.
 - 4 Both parties were invited to make written representations. On 3 December 2024 the Tribunal received a time to pay application from the Respondent pertaining to a conjoined application until Rule 111 of the Rules. On 18 December 2024 the Tribunal received an updated rent statement from the Applicant's representative, Gillespie McAndrew Solicitors.

Case Management Discussion

- 5 The CMD took place by teleconference on 19 December 2024. Mr Miles McKay of Gillespie McAndrew Solicitors represented the Applicant. The Respondent was present.
- 6 The Tribunal explained the purpose of the CMD and asked the parties to make submissions regarding the applications. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
- 7 Mr McKay explained that the Applicant had met the statutory requirements for the applications and it would be reasonable that an eviction order be granted. He confirmed that a notice to leave had been sent to the Respondent that included grounds 1 and 12, noting that this had been submitted with the application together with a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Angus Council. The Applicant was the owner of the property and a registered landlord. With regard to ground 1, Mr McKay confirmed that the Applicant had engaged Thorntons Solicitors to market and sale the property. He referred to the sales quotation and the email from

Thorntons that had been lodged with the application to evidence this. With regard to ground 12, Mr McKay advised that the arrears stood at £1810 and referred to the updated rent statement that had been submitted to the Tribunal on 18 December 2024. There had been general underpayments by the Respondent over an extended period. At one point the arrears stood at £3190. Mr McKay submitted that both grounds had been met.

- 8 In terms of reasonableness Mr McKay advised that the Tribunal had a duty to consider both the Applicant's circumstances and the Respondent's circumstances. The Applicant was 78 years old and retired. She was in considerable ill health, having been diagnosed with a serious progressive disease, which had already significantly affected her mobility and would give rise to further deterioration. She was confined to a wheelchair. She no longer wished to be a landlord due to the stress involved with the rental property. She did have an agent, Yourmove, who managed the tenancy on her behalf but the situation continued to cause her stress and she wished to sell the property in order to fund her retirement. She was not in a condition to work.
- 9 With regard to the Respondent's circumstances, Mr McKay advised that she had three dependent children and was not presently in full time employment. The Respondent had failed to provide a timeline of when she would voluntarily vacate the property. She had been aware of the Applicant's intention to sell for around eight months since the notice to leave was sent. Mr McKay advised that the Applicant would agree to a suspension of execution of the eviction order until 1 February 2025.
- 10 Ms Spurek advised that she had received a message in November 2023 that her mother had a brain tumour. Her mother and father resided in Poland. She therefore had to help her dad, which involved travelling back and forth to Poland with her family and supporting them financially with her mother's medical care. Her mother's surgery had been successful and the Respondent was currently looking for a part time job. She had previously worked as a care assistant. Because of her family circumstances she had to leave that employment. Her ex partner was refusing to assist with child care therefore she was unable to work nights as she had done previously. She was looking for a daytime job. She was trying her best to pay off the arrears and was sorry. She didn't have any excuse. She referred to the time to pay application she had submitted offering payments of £250 per week to the rent and arrears.
- 11 The Respondent stated that she accepted the Applicant's intention to sell the property and understood the reasons for this. She was finding it difficult to obtain another private let due to the situation with the rent arrears. Both the Citizens Advice Bureau ("CAB") and the local council had advised her that an eviction order may entitle her to council housing. That was her preferred option. The Respondent stated that she had resided in Scotland for 18 years. She would like to leave the property as soon as possible and clear the arrears balance. The only way she could do that was through rehousing with the council. She felt that the best option for both parties would be for an eviction order to be granted so that the council could help her. In response to questions

from the Tribunal the Respondent stated that her children were aged 8, 10 and 14 with no health issues. They all attended school in Arbroath. The Respondent herself did not have any health problems.

- 12 The Tribunal held a short adjournment to deliberate, during which time 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 and the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017:-

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.

Schedule 3, Part 12

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

Findings in Fact

- 14 The Applicant and Respondent entered into a tenancy agreement which commenced on 22 November 2019.
- 15 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 On 19 March 2024, the Applicant sent a notice to leave to the Respondent by email. The Respondent had consented to communication by email to the address provided.
- 17 The notice to leave cited grounds 1 and 12 and confirmed that proceedings for possession would not be raised any earlier than 14 June 2024.
- 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.
- 20 The Applicant is 78 years old and retired. The Applicant suffers from ill health.
- 21 The Applicant has been suffers from a serious progressive disease which has already significantly affected her mobility and will give rise to further deterioration.
- 22 The Applicant intends to leave the rental market. The Applicant requires the proceeds from the sale of the property to fund her living expenses. The Applicant is unable to work.
- 23 The Applicant has instructed Thorntons Solicitors to market the property for sale.
- 24 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.

- 25 In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £560 per month.
- 26 As at the date of the notice to leave arrears in the sum of £1680 were outstanding.
- 27 As at the date of raising the application arrears in the sum of £1810 were outstanding.
- 28 As at the date of the CMD arrears in the sum of £1810 were outstanding.
- 29 The last payment to the rent account was a payment of £250 on 13 December 2024.
- 30 The Respondent has offered to make payments of £250 per week towards the rent and arrears. The Respondent is currently seeking employment.
- 31 The Applicant's letting agent has sent correspondence to the Respondent in compliance with the rent arrears pre-action protocol.
- 32 The arrears are not due to any failure or delay in the payment of a relevant benefit.
- 33 The Respondent resides in the property with her three children aged 8, 10 and 14.
- 34 Neither the Respondent nor the Respondent's children suffer from any known health conditions. The Respondent's children attend school in the local area.

Reasons for Decision

- 35 The Tribunal determined that it had sufficient information upon which to make a decision at the CMD on the applications and that to do so would not be prejudicial to the parties. The Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed.
- 36 The applications before the Tribunal were accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon grounds 1 and 12 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 the applications could be entertained.
- 37 The Tribunal therefore considered whether grounds 1 and 12 of Schedule 3 of the 2016 Act had been met. The Tribunal was satisfied that it could make

relevant findings in fact based on the application paperwork and the submissions from the parties at the CMD.

- 38 With regard to ground 1, the Tribunal accepted that the Applicant intended to sell the property, having instructed a firm of solicitors to market the property for sale. The Tribunal also accepted that she intended to do so within three months of the property being vacated by the Respondent. The Respondent did not dispute this at the CMD.
- 39 With regard to ground 12, the Tribunal accepted that the rent account had been in arrears for three or more consecutive months both at the date the notice to leave was sent to the Respondent and the date of the CMD. The Respondent had accepted liability for the debt in her time to pay response to the conjoined application.
- 40 The Tribunal therefore considered the reasonableness of making an eviction order on account of the facts applicable to both grounds 1 and 12 which required the Tribunal to identify those facts relevant to the question of reasonableness and apply appropriate weight to these.
- 41 With regard to ground 1, the Tribunal took into account the Applicant's reasons for selling the property following her health diagnosis. The Tribunal found it credible that she would want to remove herself from the responsibilities of letting the property and fund her retirement due to her inability to work. The Tribunal applied significant weight to this as a relevant factor.
- 42 The Tribunal also took into account the Respondent's circumstances, noting that she resided in the property with three young children of whom she was the sole carer. The Tribunal noted that the Respondent was keen to obtain housing with the council, and had been advised by both the CAB and the council that the making of an eviction order would assist her with this. Whilst the Tribunal had concerns about the impact of eviction on the Respondent's children, it was noted that they had no health issues and the Tribunal was aware that the council would have a statutory obligation to provide the Respondent and her family with housing, at the very least on an emergency basis.
- 43 Accordingly having regard to the circumstances of this particular case as they pertained to ground 1, the Tribunal considered that the balance of reasonableness weighed in favour of making an eviction order. The Tribunal considered that it could give greatest weight to the Applicant's reasons for selling the property given her deteriorating health. However taking into account the Respondent's young children and the upcoming festive period which would likely delay the processing of the Respondent's housing application, the Tribunal considered it would be reasonable to suspend execution of the order for a period of three months. The Tribunal noted the Applicant had sought an extension to 1 February 2025, however based on its own knowledge of the

homelessness process, the Tribunal considered that a delay of three months would provide a realistic timescale within which the council could identify suitable alternative accommodation for the Respondent.

- 44 The Tribunal considered the reasonableness of making an eviction order under ground 12. However the Tribunal was not satisfied based on the information before it pertaining to that ground that it would be reasonable to make the order following the CMD. The Tribunal noted that the Respondent had offered payments towards rent and arrears at the rate of £250 per week, which would clear the arrears in just over four months. She had already commenced payments in accordance with the offer and had formalised this in her time to pay application in the Rule 111 case. The arrears had recently decreased and now stood at just over three months rent. The Tribunal would therefore have been minded to fix a full evidential hearing on the reasonableness of making an order under ground 12, particularly in light of the Respondent's explanation as to why the arrears had accrued. However, in view of the fact that the Tribunal had determined to make an eviction order under ground 1, it concluded that there was no requirement for an evidential hearing in the matter. Mr McKay confirmed his agreement with this. Accordingly the Tribunal dismissed the application raised under ground 12.
- 45 The Tribunal therefore determined to make an eviction order in terms of ground 1 of Schedule 3 of the 2016 Act with execution suspended for a period of three months.
- 46 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 December 2024

Legal Member/Chair

Date

