



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/24/2858

Re: Property at 91 MacDonald Smith Drive, Carnoustie, DD7 7TB (“the Property”)

Parties:

Uzaldin Tabra, Dawn Tabra, 4 Fairway View, Letham Grange, Angus, DD11 4XE; 4 Fairway View, Letham Grange,, Angus, DD11 4XE (“the Applicant”)

Karen Kennedy, 91 MacDonald Smith Drive, Carnoustie, DD7 7TB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (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 30 April 2025

Background

1 By application to the Tribunal dated 24 June 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 26 January 2018;
- (b) Notice to leave dated 14 February 2024 together with proof of service by recorded delivery mail;
- (c) Section 11 notice to Angus Council together with proof of service by email;
- (d) Copy email from the Applicants to the Applicant’s letting agent confirming their intention to sell the property; and

- (e) Copy letter from Campbell Boath Solicitor confirming receipt of the Applicant's instructions to market the property for sale.
- 2 The Tribunal was also in receipt of Land Certificate ANG76800, which confirmed the Applicants as the registered owners of the property.
 - 3 By Notice of Acceptance of Application dated 17 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 21 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 14 November 2024. Both parties were invited to make written representations in advance of the CMD.
 - 4 On 2 December 2024 the Tribunal received an email from the Respondent. The Respondent requested a postponement of the CMD in order to obtain medical evidence. The Respondent explained that she had been suffering from various health conditions which had hindered her efforts to obtain alternative accommodation. She resided with her son and daughter who both had mental health difficulties. She was more than happy to move but required time to find a suitable house. She had applied to the Council and to local housing associations. She asked for the CMD to be postponed to give her time to get a house and medical evidence.
 - 5 On 10 December 2024 the Tribunal received a response to the postponement request from Bannatyne Kirkwood France and Co, Solicitors ("the Applicant's representative"). In summary the Applicants opposed a postponement of the CMD. They noted the length of time that Respondent had had following service of the notice to leave to find alternative accommodation. Mr Tabra was also in poor health and required to sell the property at the earliest opportunity. The Applicant's representative pointed out that the Tribunal could suspend execution of any order granted, but that should be considered at the CMD. The local authority would also have an obligation to provide the Respondent with accommodation and an eviction order may be of benefit to the Respondent's housing application.
 - 6 On 17 December 2024 the Tribunal wrote to parties refusing the postponement request and confirming that the CMD would proceed as scheduled. The Tribunal stressed the purpose of the CMD, noting that it was not a full hearing, and opined that it may be of benefit to parties to have the discussion at this stage in order to identify how best to proceed with the application.

Case Management Discussion

- 7 The CMD took place on 20 December 2024. The Applicants were represented by Mr John Jarvie, Solicitor. The Applicants themselves were not in attendance. The Respondent was in attendance.

- 8 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 in terms of those matters relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.
- 9 Mr Jarvie explained that the Applicants sought an eviction order as they required to sell the property. The Applicants were no longer able to work due to ill health. They wished to sell the property so that they could fund their retirement and use the sale proceeds as a source of income. The health of both Applicants was very poor. Mr Tabras suffered from a degenerative condition and Mrs Tabras was no longer able to work following knee surgery. The Applicants were both in their mid-60s. They had two rental properties. They had recently recovered possession of the other property, which had since been sold.
- 10 The Respondent outlined her position regarding the application. She explained that she had owned her own business for 14 years but had always lived in private rented accommodation. She had been asked to leave previous properties and therefore wished to have the security of council accommodation. The Respondent explained that she lived with a 24 year old daughter and a 19 year old son, both of whom suffered with mental health difficulties. She herself had debilitating health conditions for which she provided specification to the Tribunal. Her mobility was significantly affected as a result and she had difficulty consuming food. She was going to have to sell her business as she could no longer work.
- 11 The Respondent explained that she was more than willing to leave the property. She had packed up half of the house with assistance from her mother, who was no longer able to help due to her own health problems. The Respondent explained that she was third on the council housing list. She had gold medium status with medical points with the council and silver banding with Angus Housing Association. Angus Housing Association were building new houses in the area which she hoped may be suitable for her needs. A property had recently come up but it was not practical due to having stairs. The Respondent would be high up on the list for any future properties but it would take further time to identify a property suitable to her needs. The Respondent could no longer afford to live in private rented accommodation. She had no difficulty with the Applicants, they had been kind and patient landlords.
- 12 Mr Jarvie acknowledged the difficulties in this case. He explained that the Applicants would be prepared to agree a suspension of the eviction order until March to give the Respondent additional time to vacate the property.
- 13 The Tribunal adjourned to deliberate, at which point parties left the call, before resuming the CMD 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:-

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

15 The Applicant and Respondent entered into a tenancy agreement which commenced on 26 January 2018.

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

17 On 14 February 2024 the Applicant sent a notice to leave to the Respondent by recorded delivery mail. The notice to leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 11 May 2024.

18 The Applicants are the registered owners of the property.

- 19 The Applicants both suffer from health difficulties. The Applicants are in their mid-60s and are unable to work.
- 20 The Applicants require to sell the property in order to fund their retirement.
- 21 The Applicants had one other rental property, which has been sold.
- 22 The Respondent resides in the property with her 24 year old daughter and her 19 year old son.
- 23 The Respondent has significant and debilitating health conditions. The Respondent's son and daughter both suffer from mental health issues.
- 24 The Respondent's mobility and her ability to consume food are both impacted by her health conditions.
- 25 The Respondent has applied to both the council and a local housing association for social housing.
- 26 The Respondent is in the process of selling her own business and cannot afford a private let in the local area. The Respondent desires a property in the social rented sector.
- 27 The Respondent's position is high on the housing waiting list for both the council and the local housing association.
- 28 The Respondent is preparing to vacate the property.

Reasons for Decision

- 29 The Tribunal was satisfied at the CMD that it had sufficient information upon which to make a decision and that to do so would not be contrary 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 as to the substantive matters in this case and the Tribunal was therefore able to make relevant findings in fact based on the written representations from the parties and the verbal submissions at the CMD in order to reach a decision on the application.
- 30 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.
- 31 The Tribunal accepted that the Applicants were entitled to sell the property, and intended to sell, or at least market the property for sale, within three months of

the Respondent having vacated. This was not disputed by the Respondent and the Tribunal found the Applicants' reasons for the sale to be credible.

- 32 The Tribunal therefore considered the reasonableness of making an eviction order, which required the Tribunal to identify those factors relevant to the question of reasonableness and weigh these against each other in order to make a determination on the issue.
- 33 The Tribunal took into account the Applicants' reasons for selling the property, namely to fund their retirement following a deterioration in their health that had left them unable to work. They were approaching retirement and required the sale proceeds in order to provide them with a source of income. The Tribunal also took into account their rights as the registered owners of the property, to sell with vacant possession if that was their wish.
- 34 The Tribunal also had regard to the Respondent's personal circumstances, noting her debilitating health conditions and the needs of both herself and her children. Whilst this did give the Tribunal cause for concern, the Tribunal took into account the progress the Respondent had made in pursuing rehousing with both the council and a local housing association. The Respondent had been placed high on the housing allocation list, which put her in a strong position. She had made it clear to the Tribunal that she was readying herself to move out of the property. She was keen to obtain the security of a tenancy in the social rented sector. Based on its own knowledge, the Tribunal was aware that the making of an eviction order would likely assist the Respondent in giving her housing application greater priority. However it was clear that the Respondent would require time to source a property in the social rented sector that was suitable to her needs.
- 35 Accordingly, 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 if execution of said order was suspended until the end of April 2025 to give the Respondent sufficient time to obtain a suitable property.
- 36 The Tribunal therefore made an eviction order with execution suspended until 30 April 2025. 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:

Date: 6th January 2025

