



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/24/2217

Re: Property at Flat F, Saltoun Hall, Pencaitland, East Lothian, EH34 5DS (“the Property”)

Parties:

Ms Susana Inarejos Montesinos, Mr Jose Javier Bravo Rodriguez, Flat C304, Grandeur Residence, Dubai, United Arab Emirates (“the Applicant”)

Mr Nicholas Fennell, Flat F, Saltoun Hall, Pencaitland, East Lothian, EH34 5DS (“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 31 March 2025

Background

- 1 By application to the Tribunal dated 14 May 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 17 July 2019;
 - (b) Notice to leave dated 5th February 2024 together with proof of service by email;
 - (c) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Lothian Council together with proof of service by email; and

- (d) Sworn statement signed by Ms Susana Inarejos Montesinos confirming her intention to live in the property as her principal home.
- 2 The Tribunal was also in receipt of Land Certificate ELN16452, which confirmed the Applicants as the registered owners of the property.
 - 3 By Notice of Acceptance of Application dated 29 May 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 11 October 2024 to take place by teleconference.
 - 4 Notice of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by Sheriff Officers. Both parties were invited to make written representations in advance of the CMD.
 - 5 On 4th October 2024 the Tribunal received an email from Mark Coull of Haddington Citizens Advice Bureau ("CAB") with submissions on behalf of the Respondent. A copy of the submissions was sent to the Applicant's representative by email on 7th October 2024.

Case Management Discussion

- 6 The CMD took place on 11 October 2024 by teleconference. The Applicant was represented by Ms Romana Begley of Rettie and Co. The Applicants were not themselves in attendance. The Respondent was represented by Mr Coull. The Respondent himself was not in attendance.
- 7 The Tribunal explained the purpose of the CMD and the legal test to be applied under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. Both parties were invited to make submissions on the application.
- 8 Ms Begley advised that notice to leave had been served on the Respondent on 5th February 2024. The Applicants had been living in Dubai for a number of years, however their circumstances had changed. They now had a young child and were keen to move back to Scotland. The property was ideal for family life. They wanted to resume their life back home. It was never their long term plan to reside in Dubai permanently. They had tried to make plans to come back but had been unable to do so until such time as they had vacant possession of the property.
- 9 The Tribunal asked Ms Begley if she had seen the response submitted by Mr Coull. Ms Begley advised that she had not. The Tribunal noted that it had been emailed to Ms Begley on 7th October 2024. Ms Begley advised that she was unable to access her emails but would check when she was back at her desk.
- 10 The Tribunal therefore asked Mr Coull to summarise his response for the benefit of Ms Begley. Mr Coull advised that there were a number of challenges to the application. Firstly, he understood that the property was a one bedroom

therefore he was unsure if it was appropriate for a family home. There was a lack of information in the application regarding the reasonableness of making an eviction order, for example did the Applicants have any other family properties they could move into? The second concern was regarding the Respondent's mental health. The Respondent had an extensive list of mental health conditions and was in need of stable housing. This went directly to the reasonableness of the order. Mr Coull advised that the Respondent was a disabled person, which put him at a further disadvantage. Mr Coull confirmed that he was putting forward a defence of reasonableness to the application. He was also asking the Tribunal to consider dismissing the application if reasonableness was not addressed by the Applicant.

- 11 The Tribunal proceeded to have a short adjournment for Members to deliberate. The CMD resumed and the Tribunal confirmed that it would fix a hearing in the case. The issue to be resolved at the hearing would be "*whether it is reasonable on account of the facts of the application for an eviction order to be granted*".
- 12 The hearing was assigned for 24th January 2025 at 10am to take place by teleconference. A Direction was issued to parties following the CMD setting out the arrangements for submission of evidence in advance of the hearing. Notice of the hearing was given to the parties in accordance with Rule 24(1) of the Rules.

Further procedure

- 13 On 29 November 2024 the Tribunal received an email from Mr Jamie Miller, Solicitor of Anderson Strathern Solicitors who had been instructed by the Applicants in this case. Mr Miller advised that there had been discussions between the parties and settlement terms had been reached. The parties were therefore requesting that the hearing be discharged and an eviction order granted with execution suspended until 31st March 2025. It was the submission of the parties that the Tribunal could reach a decision in terms of Rule 18 of the Rules in the absence of a hearing. The Tribunal subsequently received an email that same day from Mr Coull of Haddington CAB on behalf of the Respondent confirming his agreement with the terms of Mr Miller's email.
- 14 On 12 December 2024 the Tribunal wrote to the parties to advise that, whilst parties were in agreement, the Tribunal would still require to satisfy itself that it was reasonable to make an eviction order in the particular circumstances of this case. The Tribunal therefore requested written submissions from the parties on reasonableness before determining whether it could reach a decision in the absence of a hearing.
- 15 On 18 December 2024, the Tribunal received written submissions from Mr Miller on behalf of the Applicants. In summary, the Applicants position was that an eviction order was reasonable in the circumstances of this case, with execution suspended until 31st March 2025. The Applicants currently resided in Dubai. Their stay in the country was never to be long term. They wished to

move back to Scotland to raise their son and use the property as their only or principal home. Mr Miller made reference to the sworn statement submitted with the application confirming this intention. The Applicants had instructed architects to draft plans to extend the property to accommodate their family. Mr Miller outlined various respiratory conditions that Mr Rodriguez suffered from which had been aggravated by the climate in Dubai. His health would likely improve were he able to return to Scotland. Mr Miller provided a medical report in support of this. The Applicants emphasised with the Respondent's position and appreciated that he would require further time to obtain suitable accommodation with the local authority. Mr Miller concluded by submitting that the Applicants were entitled to exercise their right to live in the property. That right took precedence when balanced against the Respondent's rights. The Respondent had taken steps to look for accommodation and had accepted support to do so. The balance of reasonableness was therefore weighted towards the Applicants and it would be reasonable to make an eviction order.

- 16 On 18 December 2024, the Tribunal received an email from Mr Coull of Haddington CAB with written submissions on behalf of the Respondent. In summary, Mr Coull explained that the Respondent had taken time to consider his situation and had spoken with his support worker. He believed that moving on would be the best decision for his long-term wellbeing. The Respondent had been asked on several occasions if he felt that was best for him and he had agreed each time that he wished to work with the council to obtain rehousing. The Respondent accepted that the property was the Applicants' home and that they may wish to return at some point. The Respondent was now in a favourable position with sufficient lead-time to work with the local authority to secure housing. Granting the eviction order would provide a definitive resolution to the proceedings, allowing the Respondent to have a clear plan and alleviating his stress about the situation. Mr Coull explained that following discussions with the Applicant's representative the Respondent accepted that the Applicant's intention to return to the property was genuine. The outstanding question for the Tribunal was therefore the reasonableness of making an eviction order. The Respondent believed an eviction order was reasonable in the circumstances, particularly as the Applicants had agreed to allow the Respondent additional time.

Relevant Legislation

- 17 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

4(1) It is an eviction ground that the landlord 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) the landlord intends to occupy the let property as the landlord'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) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Findings in Fact and Law

- 18 The Applicant and Respondent entered into a tenancy agreement which commenced on 26 July 2019.
- 19 The tenancy was a private residential tenancy as defined by section 1 of the 2016 Act.
- 20 On 14 February 2024 the Applicant sent a notice to leave to the Respondent by email. The notice to leave cited paragraph 4 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 2 May 2024.
- 21 The Applicants are the registered owners of the property.
- 22 The Applicants currently reside in Dubai. The Applicants wish to return to live in Scotland to raise their son.
- 23 The second named Applicant suffers from respiratory conditions, which have been aggravated by the climate in Dubai. The second named Applicant's health is likely to improve were he to return to Scotland.

- 24 The Applicants have consulted an architect with a view to extending the property to accommodate their family.
- 25 The Respondent resides in the property alone. The Respondent suffers from various mental health conditions. The Respondent is not presently able to work and is in receipt of benefits.
- 26 The Respondent is receiving advice and assistance from a support worker. The Respondent desires to move on from the property and obtain accommodation with the council.
- 27 The Respondent does not object to the making of an eviction order provided execution of said order is suspended until 31 March 2025. The Respondent intends to work with the council to secure suitable alternative accommodation.

Reasons for Decision

- 28 The Tribunal was satisfied that it had sufficient information upon which to make a decision in the absence of a hearing, and that it could do so under Rule 18 of the Rules. Both parties were in now agreement as to the substantive matters in this case and the Tribunal was able to make relevant findings in fact having considered their written representations in order to reach a decision on the application. The Tribunal considered that to do so would not be contrary to the interests of the parties based on the terms of the settlement they had agreed between them.
- 29 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 4 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.
- 30 The Tribunal accepted that the Applicants intended on returning to the property to live in it as their principal home. The Respondent did not dispute this and the Tribunal found the Applicants' reasons for this as outlined in the written submissions from Mr Miller to be credible and genuine.
- 31 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.
- 32 The Tribunal took into account the Applicants' reasons for returning to the property, namely to raise their son in Scotland. The Tribunal also had regard to the fact that a return to Scotland would likely lead to an improvement in the health of the second named Applicant, whose condition had deteriorated because of the climate in Dubai.

- 33 The Tribunal also had regard to the Respondent's circumstances, noting the debilitating impact of his mental health, which had affected his ability to find suitable alternative accommodation. Whilst this did give the Tribunal cause for concern, the Tribunal took into account the progress the Respondent had made in pursuing rehousing with the council with the assistance of his support worker. As noted by Mr Coull in his written submissions, the Respondent was now in a strong position to work with the council to identify a suitable new home, provided he was given further time in order to do so. The Respondent had received the benefit of advice from both Mr Coull and his support worker in putting forward his position to the Tribunal. The Tribunal therefore accepted that it was his wish for the Tribunal make an eviction order in this case in order to provide him with a definitive conclusion to the proceedings and allow him to move on from the property.
- 34 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 31st March 2025 to give the Respondent sufficient time to obtain a suitable property with the council.
- 35 The Tribunal therefore made an eviction order with execution suspended until 31st March 2025. The decision of the Tribunal was unanimous.
- 36 For the avoidance of doubt, the Tribunal has also discharged the hearing assigned for the 24 January 2025 on the basis that it is no longer necessary.

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

10 January 2025

Legal Member/Chair

Date