



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/24/3924

Re: Property at 46 Ferry Street, Montrose, DD10 8BZ (“the Property”)

Parties:

Mr William Bryson, 55B John Street, Montrose, Angus, DD10 8LZ (“the Applicant”)

Mr Chris Robb, 46 Ferry Street, Montrose, DD10 8BZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1** The Applicant applied to the Tribunal for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 1 of schedule 3 of the 2016 Act, stating that the Applicant intended on selling the property.
- 2** The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 14 March 2025. The Tribunal gave both parties notification of the CMD in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 6 February 2025.
- 3** On 25 February 2025 the Tribunal received written representations from the Respondent.

- 4 On 28 February 2025 the Tribunal received written representations from the Applicant.

The CMD

- 5 The CMD took place on 14 March 2025 at 10am by teleconference. The Applicant joined the call and was accompanied by his wife Mrs Fiona Herald as a supporter. The Respondent was dialled into the call by the Tribunal clerk.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet ANG36224;
 - (iii) Private residential tenancy agreement between the parties;
 - (iv) Section 11 notice to Angus Council together with proof of receipt by online form;
 - (v) Notice to leave dated 25 February 2024 together with proof of delivery by email to the Respondent;
 - (vi) Copy letter from T Duncan & Co Solicitors and Estate Agents dated 17 October 2023;
 - (vii) The Respondent's written representations dated 25 February 2025; and
 - (viii) The Applicant's written representations dated 28 February 2025.
- 7 The Tribunal explained the purpose of the CMD and the legal test under ground 1 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from the parties. 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.
- 8 Mr Bryson explained that he was seeking an eviction order. The property was running at a financial loss. It was draining his pension. His mortgage rates had increased from 1.5% to 5%, resulting in an increase of around £300 per month. The property was an old property and he had spent around £3000 over the last two years on repairs. The reduction in tax relief for landlords had also had an impact. Mr Bryson had been given advice from his accountant and financial adviser that he required to sell the property. He referred to the notice to leave that had been sent to the Respondent. The situation was no longer sustainable. In response to questions from the Tribunal Mr Bryson confirmed that he did not own any other private rental properties. He had one other property, which he let as an AirBnB with a slightly better return.
- 9 Mr Robb explained that he had secured another tenancy and would be leaving at the end of this month. He was therefore just looking for time to move into the new property. On that basis, he was not objecting to the eviction order.

- 10 Having heard from the parties the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

- 11 The Tribunal considered the following provisions of the 2016 Act:-

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

12 The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 19 January 2021.

13 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.

14 On 25 February 2024, the Applicant sent a notice to leave to the Respondent by email.

- 15 The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 16 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 30 June 2024.
- 17 At the time of raising this application the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Angus Council.
- 18 The Applicant is the registered owner of the property.
- 19 The Applicant has a mortgage over the property. The Applicant's mortgage rates have increased.
- 20 The Applicant has spent approximately £3000 over the past two years carrying out repairs and maintenance to the property.
- 21 The Applicant's business is running at a loss because of the property costs. The Applicant's pension has reduced. The Applicant requires to sell the property.
- 22 The Applicant intends to market the property for sale within three months of the Respondent vacating. The Applicant has instructed solicitors in this regard.
- 23 The Respondent has secured alternative accommodation. The Respondent will move out of the property by 31st March 2025.

Reasons for Decision

- 24 In reaching its decision, the Tribunal took into account the application paperwork, written representations, and the submissions at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules, and make relevant findings in fact based on the information provided by the Applicant and the Respondent.
- 25 Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 1 was met in this case.
- 26 The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet ANG36224. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondent having vacated, having consider his reasons for selling and the letter from T Duncan & Co solicitors confirming their instructions to act on the Applicant's behalf.

- 27** The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 28** The Tribunal gave significant weight to the Applicant's property rights, which entitled him to dispose of the property, and his reasons for doing so. The Tribunal accepted that the property was no longer financially viable due to the increase in the property costs, which was causing him ongoing financial loss.
- 29** The Tribunal considered the Respondent's circumstances. The Tribunal gave significant weight to the fact that the Respondent had secured alternative accommodation and was due to move out of the property in the coming weeks. There would therefore be no prejudice to the Respondent were the Tribunal to make an eviction order.
- 30** Accordingly having considered the above factors as relevant to reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met.
- 31** 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

14 March 2025

Legal Member/Chair

Date