



**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/24/2944**

**Re: Property at 4 Western Sunnyside, Forfar, Angus, DD8 1ED (“the Property”)**

**Parties:**

**Mr David Mitchell, 16 Parkhill Place, Northmuir, Kirriemuir, Angus (“the Applicant”)**

**Miss Joni Dolan, 4 Western Sunnyside, Forfar, Angus, DD8 1ED (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met. The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

**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 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 28 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 19 February 2025. Both parties were invited to make written representations.

- 3 No written representations were received from the parties in advance of the CMD.

### **The CMD**

- 4 The CMD took place on 28 March 2025 at 10am by teleconference. The Applicant joined the call. The Respondent did not attend. The Tribunal delayed the commencement time of the CMD for a short period before noting that the Respondent had been properly notified of the CMD under Rule 17(2) of the Rules. The Applicant explained that he had spoken with the Respondent and she had not intimated that she was going to attend the CMD. She had however stated that she was not contesting the application. The Tribunal therefore determined to proceed in her absence.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 23 June 2024;
  - (ii) Title sheet ANG50332;
  - (iii) Section 11 to Angus Council together with proof of receipt by email;
  - (iv) Notice to leave dated 20 March 2024 together with proof of delivery by email to the Respondent;
  - (v) Statement from Applicant dated 23 June 2024;
  - (vi) Letter from Tayside Property Online to Applicant dated 23 May 2024;
  - (vii) Letter from MacNabs Solicitors dated 25 July 2024; and
  - (viii) Letter from George Ireland Accounting Services dated 30 July 2024.
- 6 The Tribunal explained the purpose of the CMD and proceeded to hear submissions from the Applicant. 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.
- 7 The Applicant explained that the property was part of two adjoining cottages, numbers 2 and 4 Western Sunnyside. The previous owner had converted the two cottages to one house. The Applicant had then purchased the property and had restored the two cottages, with a view to selling them. However, due to market conditions at the time, he decided to let them out instead. The Applicant explained that he had the one mortgage over both properties and could not therefore sell one, without the other. He confirmed that the tenant of 2 Western Sunnyside had recently left. The Applicant explained that he and his wife had been forced to retire early due to ill health. They had run out of capital. They still had a mortgage over their own home which they needed to pay off. They needed to sell the property to repay their own mortgage, and provided them with funds to support their retirement.
- 8 The Tribunal asked about the Respondent's circumstances. The Applicant explained that the Respondent was single, in her late 50s, and worked from home. She wanted to secure housing in the public sector. She needed an eviction order in order to do this. The local authority had a shortage of housing and would not give her a property until she was considered homeless. She

was effectively in limbo. The Respondent wanted to move and was not contesting the application.

- 9 The Tribunal adjourned the CMD to deliberate, at which point the Applicant left the call, before resuming the discussion and confirming its decision.

## **Relevant Legislation**

- 10 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**

**11** The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 1 May 2019.

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

- 13 On 20 March 2024, the Applicant sent a notice to leave to the Respondent by recorded delivery mail. The notice to leave was delivered to the Respondent on 22 March 2024.
- 14 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 15 June 2024.
- 15 On 21 June 2024 the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Angus Council.
- 16 The Applicant is the registered owner of the property.
- 17 The Applicant is 66 years old and his wife is 61 years old. The Applicant and his wife both suffer from ill health. The Applicant and his wife are no longer able to work and have had to retire early. The Applicant has incurred costs in funding private medical care
- 18 The property is held under the same title deed as 2 Western Sunnyside, Forfar. The two properties are subject to the same mortgage. The Applicant requires to sell both properties in order to pay off the mortgage. The Applicant now has vacant possession of 2 Western Sunnyside.
- 19 The property will require significant upgrades within the next three years to comply with energy standards for private tenancies. The Applicant will be unable to fund the required works. The Applicant is continuing to fund the repairs and maintenance costs for the property.
- 20 The Applicant has a mortgage over his own home. The sale of the property will enable the Applicant to pay off the mortgage on his home and retain some funds for his retirement.
- 21 The Applicant has instructed solicitors and estate agents to market and sell the property once vacant possession is obtained.
- 22 The Applicant intends to market the property for sale within three months of the Respondent vacating.
- 23 The Respondent is in her late 50s. The Respondent is single and works from home.
- 24 The Respondent does not contest the application. The Respondent wishes to secure housing with the local authority. The making of an eviction order will assist the Respondent with this.

### **Reasons for Decision**

- 25 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. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so. The Tribunal therefore determined it would not be contrary to the interests of the parties to make a decision at the CMD.

- 26** 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.
- 27** The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet ANG50332. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondent having vacated, having considered his reasons for selling and the letters from MacNabs Solicitors and Tayside Property Online confirming their instructions to act on the Applicant's behalf.
- 28** 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.
- 29** The Tribunal took into account the Applicant's property rights, which entitled him to dispose of the property, and his reasons for doing so. The Tribunal accepted that the Applicant and his wife had been forced to retire early due to ill health and were struggling financially. The sale of the property would lessen the financial strain by providing the funds to pay off the mortgage on their own home and provide some capital for their retirement. It was clear that they were simply no longer in a position to meet the costs associated with the tenancy, and would be unable to do so in future. The Tribunal gave significant weight to these factors as relevant to the issue of reasonableness.
- 30** The Tribunal carefully considered the Respondent's circumstances. The information before the Tribunal was limited in this regard, as the Respondent had not participated in the proceedings. The Tribunal was therefore reliant upon the submissions made by the Applicant at the CMD. The Tribunal accepted that the Respondent was in her late 50s, single, and worked from home. There were no dependents residing with her that would be at risk of homelessness. The Tribunal also accepted that she intended to secure council housing, and that the making of an eviction order would assist her with this.
- 31** Accordingly having considered the above factors as relevant to reasonableness, the Tribunal concluded that it could give the most weight to the Applicant's property rights and reasons for selling the property. The



balance therefore weighed in favour of making an eviction order in this case and ground 1 had been met.

**32** 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/Chair**

**Date: 28 March 2025**