



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/24/3745

Re: Property at Flat 15 (being the upper floor flat of the block), Royal Court, Queens Road, Aberdeen, AB15 4ZX (“the Property”)

Parties:

Bank of Scotland plc, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

Mr Mark Sutherland, Flat 15 (being the upper floor flat of the block), Royal Court, Queens Road, Aberdeen, AB15 4ZX (“the Respondent”)

Tribunal Members:

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

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 2 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 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 2 of schedule 3 of the 2016 Act, stating that the Applicant, as lender, intended to sell the property.
- 2** The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 2 April 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 17 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 2 April 2025 by teleconference. The Applicant's representative, Ms Caitlyn Bell of TLT Scotland, represented the Applicant. The Respondent did not join the call. The Tribunal delayed the start time of the CMD before determining to proceed in his absence.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 15 August 2024;
 - (ii) Title sheet ABN22891;
 - (iii) Excerpt from the online landlord register confirming the property is not listed on the landlord register;
 - (iv) Private residential tenancy agreement between the Respondent and Norman Cullum dated 26 August 2023;
 - (v) Section 11 notice to Aberdeen City Council together with proof of delivery by email;
 - (vi) Notice to leave dated 17 April 2024 together with proof of delivery by recorded mail to the Respondent; and
 - (vii) Extract decree from Aberdeen Court dated 28 July 2022.
- 6 The Tribunal explained the purpose of the CMD and the legal test under ground 2 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from Miss Bell. For the avoidance of doubt the following is a summary of the key elements of the discussion relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.
- 7 Miss Bell explained that the Applicant was a heritable creditor, having granted a standard security to the property owner, Norman Cullum. The Applicant had subsequently obtained a decree against Mr Cullum in July 2022. Shortly before the Applicant was due to repossess the property, they discovered that Mr Cullum had let the property to the Respondent on or around 28 August 2023. On 17 April 2024 the Applicant had sent a notice to leave to the Respondent confirming that proceedings would not be raised any earlier than 15 July 2024. The Applicant required vacant possession in order to enforce the decree granted by the court and sell the property. They were under a duty to obtain the best possible price for the owner and could only do that with vacant possession. Miss Bell submitted that it would be reasonable for the order to be granted. In response to questions from the Tribunal Miss Bell advised that the Applicant had been unable to find out much about the Respondent's circumstances, other than he was the individual to whom the property had been let.
- 8 The Tribunal adjourned the CMD to deliberate, at which point Miss Bell left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

9 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 2

2(1) It is an eviction ground that a lender intends to sell the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is subject to a heritable security,

(b) the creditor under that security is entitled to sell the property, F

(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

Findings in Fact

- 10** The property is owned by Norman Cullum. On or around 9 April 2008 Norman Cullum granted a standard security over the property in favour of the Applicant.
- 11** Norman Cullum subsequently defaulted on his mortgage payments. On 28 July 2022 the Applicant obtained a decree from Glasgow Sheriff Court against Norman Cullum. Said decree entitles the Applicant to enter into possession and sell the property.
- 12** The Respondent entered into a tenancy agreement with Norman Cullum in respect of the property, which commenced on 28 August 2023.
- 13** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 14** On 17 April 2024 the Applicant sent a notice to leave to the Respondent by recorded delivery mail.

- 15 The notice to leave cited ground 2 and stated that an application to the Tribunal would not be made any earlier than 15 July 2024.
- 16 On 15 August 2024 the Applicant emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeen City Council.
- 17 The Applicant requires to sell the property. The Applicant requires the Respondent to leave the property for the purpose of disposing of it with vacant possession. The Applicant has a legal duty to achieve best value for the owners. A sale with vacant possession will ensure the maximum possible sale price.

Reasons for Decision

- 18 The Tribunal took into account the application paperwork 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 parties. The Tribunal did not identified any issues to be resolved in this case that would require a hearing to be fixed.
- 19 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 2 had been met in this case.
- 20 The Tribunal accepted based on the evidence produced by the Applicant that they were the holders of a standard security over the property and that they held a sheriff court decree entitling them to sell the property. The Tribunal further accepted that they had a duty to achieve best value in any sale and would be unable to do so in the absence of vacant possession. The Tribunal therefore went on to consider 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.
- 21 The Tribunal gave significant weight to the fact that the Applicant was the holder of a standard security over the property and a court decree, which gave them rights over the property in terms of disposal. The Tribunal also accepted that a sale with a sitting tenant would attract a far lesser value than if the property was offered with vacant possession. The Applicant had a duty to ensure that the maximum sale price was achieved in order to protect the owner's interests, and could only do that if the property was marketed in the best possible condition.
- 22 The Tribunal was unaware of the Respondent's circumstances, other than the fact that he had been the tenant of the property since 28 August 2023. Whilst

the risk of homelessness to the Respondent was a cause for concern, ultimately the Respondent had chosen not to participate in the proceedings. He had been given the opportunity to do so, and had been advised that the Tribunal could proceed to make a decision at the CMD in his absence. He had not, however, submitted any information to counter the facts established by the Applicant, nor outweigh the aforementioned factors the Tribunal has identified as relevant to reasonableness in this case.

23 Accordingly the Tribunal concluded that the balance weighed in favour of making an eviction order on account of the facts in this case and that ground 2 had been met.

24 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.

2 April 2025

Legal Member/Chair

Date