



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/24/2739

Re: Property at 221 Tweedsmuir Road, Cardonald, Glasgow, G52 2EE (“the Property”)

Parties:

Mr Gerald Cannon, C/O Glasgow Property Letting LTD, 17 Elmbank Street, Glasgow, G2 4PB (“the Applicant”)

Miss Maryisa McBride, 221 Tweedsmuir Road, Cardonald, Glasgow, G52 2EE (“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 section 51 and grounds 1 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met in this case. The Tribunal therefore made 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 2016 Act. The Applicant relied upon grounds 1 and 12 of schedule 3 of the 2016 as the grounds for possession in this case.
- 2 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 5 March 2025. Notification of the CMD 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 23 January 2025. Both parties were given the opportunity to make written representations.

- 3 On 19 February 2025 the Applicant submitted an updated rent statement to the Tribunal.
- 4 No written representations were received from the Respondent in advance of the CMD.

The CMD

- 5 The CMD took place on 5 March 2025 by teleconference. The Applicant joined the call and was represented by Ms Emma Hamilton of Clarity Simplicity Ltd. The Respondent did not attend. The Tribunal delayed the start time of the CMD for a short period before determining to proceed in her absence.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title Sheet GLA25067 confirming the Applicant as the registered owner of the property;
 - (iii) Proof of the Applicant's landlord registration in the form of an excerpt from the online landlord register;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Notice to leave dated 4 January 2024 together with proof of service on the Respondent by recorded delivery mail;
 - (vi) Section 11 notice to Glasgow City Council together with proof of delivery by email;
 - (vii) Rent Statements;
 - (viii) Copy correspondence from the Clarity Simplicity Ltd to the Respondent in accordance with the rent arrears pre-action protocol; and
 - (ix) Terms of business from Bilkus and Boyle Solicitors regarding the sale of the property.
- 7 The Tribunal explained the purpose of the CMD and asked Ms Hamilton for her submissions on the application. For the avoidance of doubt, the following is a summary of those submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 8 Ms Hamilton addressed the Tribunal, with occasional input from the Applicant. She confirmed that the Applicant sought an eviction order. A notice to leave had been given to the Respondent on 4 January 2024. The Applicant had a rental portfolio, and he was downsizing and selling off his properties in anticipation of retirement. He had hoped to retire last year, at the age of 65, but this had been delayed as a result of this situation, and the rent arrears that the Respondent had accrued. Ms Hamilton confirmed that the Applicant had a mortgage over the property on a flexi rate, with payments of £575 per month which he required to meet. He had to continue working in order to afford this, and rely upon money from his pension fund. There had been no engagement whatsoever from the Respondent. Both Ms Hamilton and the Applicant outlined

the attempts that had been made to contact her since the arrears began to accrue in 2021.

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

Relevant Legislation

- 10 The Tribunal considered 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, Parts 1 and 12

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.

12 Rent arrears

“12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).

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

- (a) for three or more consecutive months the tenant has been in arrears of rent, and*
- (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*
 - (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*
 - (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
- (5) For the purposes of this paragraph—*
 - (a) references to a relevant benefit are to—*
 - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
 - (ii) a payment on account awarded under regulation 91 of those Regulations,*
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*
- (6) Regulations under sub-paragraph (4)(b) may make provision about—*
 - (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*
 - (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*
 - (c) such other matters as the Scottish Ministers consider appropriate.”*

Findings in Fact

11. The Applicant is the registered owner of the property.
12. The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 16 August 2021.

13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
14. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £745 per month.
15. On 4 January 2024 the Applicant sent the Respondent a notice to leave by recorded delivery mail.
16. The notice to leave cited grounds 1 and 12 of schedule 3 of the 2016 Act and stated that proceedings for possession would not be raised any earlier than 4 April 2024.
17. As at the date of service of the notice to leave arrears in the sum of £2410 were outstanding.
18. On 13 June 2024 the Applicant's representative, Clarity Simplicity Ltd, emailed Glasgow City Council with a notice under section 11 of the Homelessness etc (Scotland) Act 2003 intimating that proceedings would be raised against the Respondent for recovery of the property.
19. As at the date of raising this application arrears in the sum of £5435 were outstanding.
20. As at the date of this decision arrears in the sum of £12,885 are outstanding.
21. The arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
22. The Applicant has written to the Respondent informing her of the arrears and her rental obligations, has offered to enter into payments plans regarding the rent and arrears, and has directed the Respondent to agencies for advice and support.
23. The Applicant intends to sell, or at least market the property for sale, within three months of the Respondent vacating.
24. The Applicant is taking steps to sell off his rental portfolio in order to fund his retirement.
25. The Applicant has a mortgage over the property. The Applicant's mortgage payments are approximately £500 per month.
26. The Applicant is aged 65. The Applicant intended to retire last year but has had to continue working to maintain an income in order to cover the mortgage for the property. The Applicant has on occasion had to fund the mortgage costs from his pension fund in the absence of rental income.

27. The Respondent has failed to engage with the Applicant regarding the rent arrears. The Respondent is believed to reside in the property with a partner and two children.

Reasons for Decision

28. The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so.
29. Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondent had been given a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003. The Tribunal therefore considered whether grounds 1 and 12 of schedule 3 of the 2016 Act had been met in this case.
30. The Tribunal accepted that the Applicant is entitled to sell the property as the registered owner. The Tribunal also accepted that the Applicant intends on marketing the property for sale within three months of the Respondent vacating. The Tribunal found the Applicant's reasons for selling the property as outlined to be credible and the Respondent had not sought to challenge this.
31. The Tribunal was also satisfied based on the rent statement produced by the Applicant that the Respondent had accrued rent arrears over a period of three or more consecutive months both as at the date of service of the notice to leave and the date of raising the Tribunal application.
32. 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.
33. The Tribunal took into account the Applicant's reasons for selling the property, namely to reduce his rental portfolio and fund his retirement. The Tribunal gave significant weight to this as a relevant factor. The Tribunal also gave great weight to the Applicant's property rights as the registered owner of the property, which would entitle him to possession, were an assured tenancy not in place.
34. The Tribunal took into account the rent arrears in this case which were significant. There had been no payments to the rent account since April 2024 and the Respondent had not provided any reasonable explanation as to why this was the case. There was no evidence to indicate that the arrears were due

to any delay or failure in the payment of a relevant benefit, and the Tribunal was satisfied, based on the correspondence produced from Clarity Simplicity Ltd, that the Applicant had sufficiently complied with the rent arrears pre-action protocol. The Tribunal also noted the impact of the arrears on the Applicant's financial position, at a time where he was planning his retirement. He had been forced to keep working and to use his pension funds to meet the ongoing mortgage payments. These were all factors to which the Tribunal gave significant weight.

35. The Tribunal had regard to the Respondent's circumstances. The information before the Tribunal was limited in this regard, as the Respondent had not participated in the proceedings. However, based on the submissions from the Applicant, and in the absence of any evidence to the contrary, the Tribunal accepted that the Respondent likely resided in the property with a partner and two children. Whilst the general impact of eviction on the Respondent and her family was a cause for concern, the Tribunal considered that it did not outweigh the other factors the Tribunal had identified as relevant to reasonableness. The Tribunal noted that the Respondent had failed to engage with the Applicant regarding the arrears, and appeared to have made no efforts to address the situation, which continued to cause significant detriment to the Applicant.
36. Having considered the above factors as relevant to the issue of reasonableness the Tribunal concluded that the balance weighed in favour of granting an eviction order in this case.
37. The Tribunal therefore determined that both grounds 1 and 12 of schedule 3 of the 2016 Act been met and made an eviction order. 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.

5 March 2025

Legal Member/Chair

Date

