



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/24/3802

Re: Property at 32 Brown Street, Armadale, EH48 3LB (“the Property”)

Parties:

Mr Robert MacIntyre, 101 Agave Road, Valle del Este, Vera, Andalucia, 04620, Spain (“the Applicant”)

Mr Matthew Robert Thomson, 32 Brown Street, Armadale, EH48 3LB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (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 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** By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion (“CMD”) was scheduled to take place by teleconference on 17 March 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 12 February 2025.

- 3 Both parties were invited to make written representations. No representations were received from either party in advance of the CMD.

The CMD

- 4 The CMD took place on 17 March 2025 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 deciding to proceed in his absence.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 19 August 2024;
 - (ii) Title sheet WLN20459;
 - (iii) Excerpt from the online landlord register confirming proof of the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties date 27 June 2023;
 - (v) Section 11 notice to West Lothian Council together with proof of delivery by email;
 - (vi) Notice to leave dated 22 May 2024 together with proof of delivery by email to the Respondent; and
 - (vii) Copy letter from Gibson Estate Agents dated 19 August 2024 confirming receipt of the Applicant's instructions to market the property for sale.
- 6 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 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 he was seeking an eviction order. The Respondent appeared to have left the property and had handed back the keys. However the Applicant wished the protection of an eviction order. The Applicant explained that the original tenancy agreement was a joint tenancy between the Respondent and his partner. His partner had then passed away and the Respondent signed a new sole tenancy agreement. The Respondent had since lived in the property alone. He had two young children who resided elsewhere. The Applicant confirmed that he was in the process of selling his rental portfolio. He required to do this on a staged basis due to tax implications. He was in the process of moving to Spain and required the sale proceeds from the property to fund the purchase of a new home. The Applicant had been a landlord for 20 years and this was the first time he had been in this type of situation before the Tribunal.
- 8 Having heard from the Applicant the Tribunal adjourned the CMD to deliberate, at which point parties 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 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

- 10** The Applicant and the Respondent entered into a private residential tenancy agreement dated 27 June 2023.
- 11** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 12** On 22 May 2024 the Applicant sent a notice to leave to the Respondent by email.
- 13** The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.

- 14 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 17 August 2024.
- 15 On 19 August 2024 the Applicant emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Falkirk Council.
- 16 The Applicant is the registered owner of the property.
- 17 The Applicant requires to sell the property in order to fund his move to Spain. The Applicant requires the sale proceeds to buy a property in Spain. The Applicant will no longer be able to manage the property from overseas.
- 18 The Applicant is in the process of selling his rental portfolio on a staged basis due to the tax implications.
- 19 The Respondent resides in the property alone.
- 20 The Respondent appears to have vacated the property and has returned the keys.

Reasons for Decision

- 21 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 Applicant.
- 22 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 had been met in this case.
- 23 The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet WLN20459. The Tribunal also accepted that the Applicant intended on marketing the property for sale upon the Respondent vacating. The Tribunal found the Applicant's reasons for selling the property as outlined to be credible and therefore accepted that his intention was genuine in this case. This was supported by evidence in the form of a letter from an estate agent confirming the agent's instructions to market the property for sale on the Applicant's behalf.
- 24 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.
- 25 The Tribunal gave significant weight to the Applicants' property rights, which entitled him to dispose of the property, and his reasons for doing so, namely

to fund his move to Spain. The Tribunal also took into account the Respondent's circumstances, noting that he appeared to have left the property and there would therefore be no prejudice to him were an eviction order to be granted. There were also no dependents who would be at risk of homelessness as the Respondent had resided alone.

- 26** The Tribunal therefore concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met.
- 27** 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

17 March 2025

Legal Member/Chair

Date