



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 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”)

Chamber Ref: FTS/HPC/EV/24/4367

Re: Property at 31 McClelland Crescent, Dunfermline, KY11 3BN (“the Property”)

Parties:

Ms Sharon McNicoll, Cameron House, Blairadam, Kelty, KY4 0JB (“the Applicant”)

Ms Amber Beveridge, 31 McClelland Crescent, Dunfermline, KY11 3BN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property be granted.

Background

1. By application received on 17 September 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act. Recovery was sought on the basis of Ground 4 of Schedule 3 to the 2016 Act (landlord intends to live in the property). Supporting documentation was submitted with, including a copy of the Notice to Leave and an Affidavit from the Applicant confirming her intention to reside in the Property as soon as possession is recovered. A copy tenancy agreement was not produced, the Applicant’s representative advising that the Applicant’s copy of same had been lost. It was stated that the original tenancy had commenced in 2016 but a new tenancy agreement had been entered into, commencing on 15 July 2020, which was deemed to be a Private Residential Tenancy (PRT).

2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations dated 18 November 2024. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. Said notification was served on the Respondent by Sheriff Officer on 26 February 2025.
3. By email dated 15 March 2025, written representations were lodged by the Respondent, indicating that she intended to remove from the Property and had approached the local authority for social housing. Acting on advice from them, she was unable to move out of the Property by the date in the Notice to Leave and was informed that she would not be given housing for herself and her four children until an eviction order had been granted to the Applicant. The Respondent also took objection to allegations made by the Applicant that she had not maintained the Property properly and had failed to report property repair issues to the Applicant. She alleged, in turn, that the Applicant had failed to carry out required repairs/maintenance to the Property during the tenancy.
4. An email was lodged on behalf of the Applicant on 15 April 2025, containing written representations in response to those lodged by the Respondent.
5. Further written representations were lodged by the Respondent by email on 16 April 2025, in response to the Applicant’s representations dated 15 April 2025. The Respondent provided further details regarding her own health issues and stress caused by this situation and, particularly, by the Applicant’s partner, Ms McManus, whom the Respondent stated was her original landlord.
6. A further email was lodged on behalf of the Applicant on 18 April 2025, attaching a few pages of the 2020 tenancy agreement which the Applicant had located. It was explained that the tenancy agreement had been requested by the Respondent, in connection with a benefits claim, and that the agreement had been submitted to the local authority. They have confirmed that they hold a copy but would not release it due to Data Protection. This correspondence was only circulated by the Tribunal Administration to the Tribunal Members and the Respondent on 22 April 2025, the morning of the CMD.
7. Prior to the CMD commencing on 22 April 2025, the Respondent submitted a further email, providing further information regarding the tenancy agreement.

Summary of Discussion

8. A Case Management Discussion (“CMD”) took place by telephone conference call on 22 April 2025 at 2pm, attended by Mrs Jacqueline Barr of Streets Ahead Scotland on behalf of the Applicant and by the Respondent, Ms Amber

Beveridge, who was accompanied by her mother, Ms Mary Beveridge, attending in a supportive capacity only.

9. Following introductions and introductory remarks by the Legal Member, Mrs Barr and Ms Beveridge confirmed they have had sight of all the documentation lodged by the each other in the run-up to the CMD, including that circulated earlier today.
10. The Respondent was asked to confirm her position in relation to the eviction application. She confirmed that was not contesting the eviction as she still intends to remove from the Property as soon as she gets alternative accommodation from the local authority, Fife Council, to whom she has applied. She stated that she also looked previously at private lets but could not find anything suitable. She needs a minimum of three bedrooms as she has four children. The local authority told her not to move out until an eviction order had been granted and she had to take their advice as she could not risk herself and her children being homeless. She confirmed that she has lived in this area for years, her family are nearby, her children are at local schools and she has lived in the Property for nine years. However, due to the allegations made against her and her family members by the Applicant and the conduct of the Applicant/her partner, Ms Beveridge confirmed that she had wished to respond to the Tribunal application and some of the things which had been stated by the Applicant, and to put forward her own side of things. Ms Beveridge stated that she understood that the repair/maintenance issues were not particularly relevant to the eviction ground being relied upon by the Applicant but had wished to set the record straight in respect of the allegations made. As to the tenancy agreement issue, Ms Beveridge's position was that the original lease in 2016 had been with the Applicant's partner, Ms McManus, whose parents used to own the Property, and that she initially paid rent to and dealt only with Ms McManus. However, she was subsequently told that the Applicant had bought the Property and was her new landlord. However, it tended to still be Ms McManus that attended to issues concerning the tenancy. Ms Beveridge stated that Ms McManus had originally provided her with letters confirming details of the tenancy and rent amount in connection with her benefits but the local authority had subsequently asked for a copy of the tenancy agreement. Ms Beveridge said that she had kept asking for a copy of the agreement but only received this last year. When it was eventually produced, she said that she was advised not to sign it because it dated back to 2020 and was produced in the joint names of herself and her ex-partner whom she had separated from some time before. Ms Beveridge thinks the original rent in terms of the lease was £550, which has risen twice, first to £600 and is now just over £705. Ms Beveridge confirmed that her benefits have risen to cover the increased rent payments and that she has not had any difficulties with rent arrears. Ms Beveridge was asked if she was wishing to make any technical argument regarding the lease and whether or not a valid PRT had been entered into, given that the eviction application is based on there being a PRT lease in place between the parties. Ms Beveridge confirmed that she was not wishing to make this argument and reiterated that she was not contesting the eviction. She stated that the matter had already been going on for a long time and that there had, in fact, been an earlier notice served and attempt to evict her.

11. Mrs Barr confirmed that the 2020 lease, drawn up by the Applicant herself, had wrongly been called a Short Assured Tenancy in the document, but that it was actually a PRT due to the date it commenced. She maintained that the Applicant had always been the landlord, although it may be that Ms McManus had effectively been acting as the Applicant's agent in dealing with the tenancy. It was noted by the Legal Member that the Landlord Registration and title deeds were in the sole name of the Applicant, although it appeared from the title deeds that she had only purchased the Property in 2021 [it has subsequently been noted by the Legal Member that the purchase date stated in the title deeds was in fact 2018 [apologies for any confusion caused]]. Mrs Barr stated that it had also been the Respondent's partner who had previously dealt more with the tenancy side of things, rather than the Respondent herself. Mrs Barr stated that the pages of the lease she had seen named the Respondent as the sole tenant and explained again the difficulties she has encountered trying to recover a full copy of the tenancy paperwork from the local authority. As to the repairs/maintenance side of things which is disputed between the parties, Mrs Barr does not intend to bring this further into the discussions today as it is not relevant to the eviction ground being relied upon by the Applicant.
12. Mrs Barr explained that the reason for the Applicant wishing to recover possession of the Property was due to her own personal circumstances. She confirmed that the Applicant is 61 years old and has provided an Affidavit confirming that she intends to live in the Property herself. Mrs Barr stated that the Applicant is effectively homeless, having come out of a relationship. Her address given in the application is Ms McManus's address but Mrs Barr stated that the Applicant is understood not to be living there, but just using it as a postal address. Mrs Barr stated that the Applicant is currently 'sofa-surfing' between family and friend's houses, on the nights she is not working shifts in the care environment, understood to involve thirteen shifts per month. She sometimes stays with her daughter or her son in Edinburgh. She finds this situation very stressful and has been trying to recover the Property to live in herself for some time. Mrs Barr explained that the Applicant did serve notice herself previously and applied to the Tribunal in 2023 for eviction but she had not been fully aware of the procedures and that application was not able to proceed. The Applicant has additional expenses incurred in travelling from the places she is staying to her workplace and also knows she will have to spend some money on the Property when she recovers possession.
13. Ms Beveridge stated that she did not really believe that the Applicant was being genuine in her position being put to the Tribunal regarding her current living arrangements and intention to move into the Property herself. However, she did not wish to further that argument or contest the eviction for the reasons stated. Ms Beveridge also gave details regarding her own health conditions and the stress she has been caused by the situation. She considers that her landlord's attitude towards her had hardened when the Respondent and her ex-partner had split up in 2020 and although she likes living where she does, she does not wish to remain the tenant of the Applicant. Ms Beveridge confirmed that she first made contact with the local authority some time ago and that the person dealing with her had been off sick for a while but has now returned to

work. She last had contact with the local authority on 27 February 2025, when she made them aware of the Tribunal application and today's hearing. It was noted that her four children are aged 16, 12, 9 and 4, with the two eldest at a local secondary school and the two youngest at a local primary school. Ms Beveridge stated that she has various medical conditions and does not drive. Her son, aged 16, is just about to start his school exams and she would not wish those to be disrupted, if they were to be evicted within the next five or six weeks. She stated that it would be helpful to her if the Tribunal could extend the date for eviction so that the exam period has passed and to give the local authority some more time to find suitable accommodation for her family. She is worried about being potentially made homeless.

14. As regards a possible extension on any eviction date, Mrs Barr stated that, in her opinion, the Respondent has already had ample time to find alternative accommodation and the Applicant's own circumstances are such that she does wish to recover possession of her Property as soon as possible. However, she does not think that, having been waiting since 2023 to recover the Property, a month or so extension would make much difference.
15. The Tribunal adjourned to consider the application in private and, on re-convening, advised the parties that an eviction order would be granted on the ground sought, subject to an extension of approximately a month on the standard timescale for an eviction order being enforceable. The earliest date for eviction to be stipulated in the eviction order will accordingly be 1 July 2025. It was explained that the decision paperwork would be issued shortly and that Ms Beveridge should provide a copy to the local authority in order that her housing application could be progressed meantime. Parties were thanked for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 15 July 2020, although she has occupied the Property since 2016 by virtue of a previous tenancy.
3. A Notice to Leave specifying ground 4 and dated 2 April 2024 was served on the Respondent by Sheriff Officer on 3 April 2024.
4. The date specified in the Notice to Leave as the earliest date a Tribunal application could be lodged was 27 July 2024.
5. The Tribunal Application was received on 17 September 2024.
6. The Applicant intends to live in the Property as her only or principal home for at least 3 months.

7. The Respondent continues to reside in the Property.
8. The Respondent attended the CMD and did not oppose the eviction application.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers, including the application and supporting documentation, the written representations and further documentation lodged by both parties prior to the CMD and the oral representations made by the Applicant's representative and the Respondent at the CMD.
2. The Tribunal found that the application was in order and that notice had been served timeously and in accordance with the terms of the legislation.
3. It was unfortunate that a copy of the 2016 tenancy agreement and a full copy of the 2020 tenancy agreement could not be produced to the Tribunal as there was some conflicting information put forward by the parties. However, on balance, the Tribunal was satisfied that a new tenancy was in place and that it should properly be regarded as a PRT, given that it was created after 1 December 2017, as per the terms of the 2016 Act. The Respondent's position was that there was a different landlord in respect of the 2016 tenancy, that the original tenancy had been in the joint names of herself and her ex-partner and that there was a lower rental amount specified in the 2016 tenancy. The 2020 PRT tenancy (or a version of it) had also been requested by the Respondent and used for the purpose of supporting the Respondent's benefits claim with the local authority.
4. The Tribunal was also satisfied that the ground of eviction, that the landlord intends to live in the let property, had been met (Ground 4 of Schedule 3 to the 2016 Act), in that the Tribunal was satisfied from the terms of the Affidavit lodged from the Applicant, together with the submissions made on her behalf by her representative at the CMD, that the Applicant intends to occupy the Property as her only or principal home for a period of at least three months and that it was reasonable to issue an eviction order in the circumstances. The Tribunal had regard to the reasons put forward by the Applicant's representative for the Applicant's need to have the Property back in order to live in herself and the fact that, although the Respondent stated that she did not necessarily believe all that was said regarding the Applicant's current living circumstances, she was very firm that she did not wish to contest the eviction, nor that it was reasonable for the Tribunal to grant an eviction order in the circumstances. The Tribunal also had regard to the Respondent's personal and family circumstances but that she had sought advice from the local authority at an early stage regarding obtaining alternative accommodation from them and that they were awaiting confirmation that an eviction order had been granted in order that her housing application could progress. Having also considered the comments from both parties at the CMD regarding the Tribunal exercising its discretion to extend the usual timeframe for the eviction order being enforceable, the Tribunal determined that it was appropriate to extend the

timeframe, such that the date to be included in the formal order as the earliest eviction date would be 1 July 2025. The Tribunal considered that this extension would allow some additional time for suitable local authority accommodation to be identified for the Respondent and her four children and for the eldest child to complete his end of year school exams without disruption.

5. The Tribunal unanimously determined that an order for recovery of possession of the Property could properly be granted at the CMD, there being no requirement for the application to be considered at an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

22 April 2025
Date