



**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/24/2879

Re: Property at 13A High Street, Stonehaven, AB39 2JP (“the Property”)

Parties:

Mrs Gillian Munro, Eas An T-Sil, 25 Tarskavaig, Isle Of Skye, IV46 8SA (“the Applicant”)

Miss Sheena McKenzie, 13A High Street, Stonehaven, AB39 2JP (“the Respondent”)

Tribunal Members:

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

Decision [in absence of Respondent]

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 and it would be reasonable to make an eviction order.

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 3 April 2025. The Tribunal gave both parties notification of the CMD in terms of 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 either party in advance of the CMD.

The CMD

- 4 The CMD took place on 3 April 2025 at 10am by teleconference. Mr Paddy O'Donnell of Aberdeen Considine Solicitors represented the Applicant. The Respondent did not join the call. The Tribunal delayed the start time of the CMD before determining to proceed in her absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 25 June 2024;
 - (ii) Title sheet KNC17861;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 9 November 2020 and 4 January 2021;
 - (v) Section 11 notice to Aberdeenshire Council together with proof of delivery by email;
 - (vi) Notice to leave dated 7 February 2024 together with proof of delivery by sheriff officers to the Respondent; and
 - (vii) Statement by the Applicant.
- 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 Mr O'Donnell. For the avoidance of doubt the following is a summary of the key elements of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 Mr O'Donnell explained that a notice to leave had been sent to the Respondent on 12 February 2024, citing ground 1. The notice expired on 7 May 2024 and the Respondent had failed to vacate the property. Mr O'Donnell confirmed that there were no outstanding rent arrears. The Applicant required to sell the property. Mr O'Donnell explained the changes in the Applicant's circumstances that had led to her requiring to sell the property in order to reduce her financial commitments. She had a mortgage over her own home and she wished to use the sale proceeds to reduce that balance. Mr O'Donnell confirmed that the Applicant had purchased the property with her late uncle. The Applicant had been in touch with Aberdeen Considine Solicitors and had instructed them to proceed with the sale of the property as soon as vacant possession was secured.
- 8 Mr O'Donnell explained that he had scant information regarding the Respondent's circumstances. It did not appear that she had any children or any other persons residing with her. The Respondent had not given any

indication that she had vacated the property and she had not returned the keys. She had provided no evidence of her efforts to find alternative accommodation. The Applicant had spoken with the Respondent following the expiry of the notice to leave, and the Respondent had stated that she had found another property in the local area. However, the Respondent subsequently failed to provide any further information regarding this. Mr O'Donnell explained that the Applicant had allowed the Respondent a further six weeks after the expiry of the notice to leave before submitting the application to the Tribunal. He submitted that ground 1 had been met and it would be reasonable to make an eviction order. He confirmed that the Applicant had submitted a section 11 notice to the local authority at the time of raising the application.

- 9 Having heard from Mr O'Donnell the Tribunal adjourned the CMD to deliberate, at which point parties 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 is the heritable owner of the property.
- 12 The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 9 November 2020.
- 13 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 12 February 2024 the Applicant served a notice to leave upon the Respondent by sheriff officers.
- 15 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 8 May 2024.
- 16 On 17 June 2024 the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeenshire Council by email.
- 17 The Applicant intends to market the property for sale within three months of the Respondent vacating. The Applicant has instructed Aberdeen Considine Solicitors to act for her in the sale.
- 18 The Applicant requires to sell the property. Due to changes in the Applicant's personal circumstances she must reduce her financial commitments.
- 19 The Applicant has a mortgage over her main residential home. The Applicant requires the sale proceeds from the property to pay towards the balance of her mortgage.
- 20 The let property is also subject to a mortgage.
- 21 The Applicant does not own any other rental properties.
- 22 The Respondent is believed to reside in the property alone.
- 23 The Respondent has failed to remove from the property following the service of the notice to leave.

Reasons for Decision

- 24 The Tribunal took into account the application paperwork and the submissions from Mr O'Donnell 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 not sought to challenge the terms of the application, and had chosen not to participate in the proceedings. There were therefore no issues to be resolved that would require a hearing to be fixed,

and the Tribunal was satisfied that to make a decision at the CMD would not be contrary to the interests of the parties.

- 25** 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.
- 26** The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet KNC17861. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondent having vacated. The Applicant's reasons for doing so were credible in that she required to reduce her financial commitments due to changes in her personal circumstances.
- 27** 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.
- 28** The Tribunal took into account the Applicant's property rights, which entitled her to dispose of the property, and her reasons for doing so. The Tribunal also had regard to the Applicant's circumstances which required her to sell the property to reduce her financial commitments. The Tribunal noted that she had caring responsibilities as a single parent for two children, and that she wished to provide a stable environment for them. These were all factors to which the Tribunal gave significant weight.
- 29** The Tribunal had little information regarding the Respondent's circumstances. She had however been given the opportunity to make written representations to the Tribunal regarding the application, and to attend the CMD. She had chosen to do neither. The Tribunal therefore considered it could proceed on the basis of the information provided by Mr O'Donnell. The Tribunal accepted that there had been no indication of any children residing at the property, and that the Respondent had provided no evidence of her efforts to source alternative accommodation, with the exception of the comments she had made to the Applicant following the expiry of the notice to leave. Whilst the Tribunal had concerns about the general impact of eviction on the Respondent, she had provided no detail regarding her personal circumstances. The Tribunal was also aware of the local authority's statutory obligations towards the Respondent in terms of offering emergency accommodation if the Tribunal were to make an eviction order.
- 30** Accordingly, taking the above into account as factor relevant to the issue of reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met. The Tribunal therefore made an eviction order.

31 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

3 April 2025

Legal Member/Chair

Date