



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/24/4658

Re: Property at 58 Sandy Road, Renfrew, PA4 0TE (“the Property”)

Parties:

Mr Alastair Buchan, 88 Calder Street, Lochwinnoch, PA12 4DG (“the Applicant”)

Ms Julia Keys, 58 Sandy Road, Renfrew, PA4 0TE (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (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 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order on account of the facts in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 4 as the ground for possession, stating that he intended to live in the property.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 2 May 2025. The Tribunal gave parties notification of the CMD under Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 4 March 2025.
- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received from either party.

The Case Management Discussion

- 4 The CMD took place by teleconference at 10am on 2 May 2025. Mr Barry Lind of Lind Letting 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, noting she had received proper notification under Rule 17(2) of the Rules.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 8 October 2024;
 - (ii) Title Sheet REN57345;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 7 May 2020;
 - (v) Notice to leave dated 11 June 2024 and proof of delivery to the Respondent by email;
 - (vi) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 and proof of delivery by email;
 - (vii) Applicant's statement dated 12 June 2024; and
 - (viii) Affidavit by the Applicant dated 26 November 2024.
- 6 The Tribunal explained the purpose of the CMD and invited Mr Lind to make submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion and not a verbatim account.
- 7 Mr Lind confirmed that the Applicant sought an eviction order as he wished to return to live in the property. The property had been his family home and was the only property he owned. He had left it to reside with his partner in a property owned by her. However, they were no longer together. The Applicant's ex-partner's son had also moved back into the property after university and it was now overcrowded. The Applicant wished to move back to his own home. Mr Lind confirmed that the let property was a two bedroom property. The Respondent was believed to reside there with her daughter. The Respondent's daughter was in her mid-20s. Neither the Applicant nor Mr Lind had been in communication with the Respondent for a few months. However when Mr Lind had spoken with her regarding the application she had indicated that she was going to be rehoused by the local authority. Mr Lind understood the Respondent had some mobility problems and could not longer climb the stairs in the property. He was not aware of any other health issues on the Respondent's part. The Applicant and the Respondent had previously worked together and he had offered the Respondent the property when he moved in with his ex-partner. Mr Lind did not know if the Respondent was still in employment. There were no rent arrears on the account.
- 8 The Tribunal adjourned the CMD to deliberate, at which point Mr Lind, the applicant's representative, left the call, before resuming the CMD and confirming the outcome.

Relevant Legislation

- 9 The Tribunal considered the following provisions of the 2016 Act as relevant to this application:-

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.

(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.”

Schedule 3 – Part 4

4 (1) It is an eviction ground that the landlord intends to live in the let property.

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

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Findings in Fact

10 The Applicant is the registered owner of the property in terms of Title Sheet REN57345. The Applicant is a registered landlord.

11 The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 11 May 2020.

- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 11 June 2024 the Applicant sent the Respondent a notice to leave by email. The notice to leave stated that an application would not be submitted to the Tribunal any earlier than 7 September 2024. The notice to leave included ground 4 of schedule 3 of the 2016 Act.
- 14 The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 15 The Respondent consented to the delivery of notices arising from the tenancy by email in terms of Clause 4 of the said tenancy agreement.
- 16 On 8 October 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Renfrewshire Council.
- 17 The Applicant intends to live in the property as his only or principal home for a period of at least three months.
- 18 The property is the Applicant's previous home and the only property he owns. The Applicant left the property to reside with his partner in a property owned by her. The Applicant and his partner are no longer together. The Applicant's son has moved back to his partner's property. The property is now overcrowded.
- 19 The Respondent resides in the property with her daughter. The Respondent's daughter is in her mid-20s.
- 20 The Respondent cannot manage the stairs in the property due to mobility issues.
- 21 The Respondent is seeking rehousing with the local authority.

Reasons for decision

- 22 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 make written representations and attend the CMD but had chosen not to do so. There was therefore nothing before the Tribunal to contradict the evidence submitted by the Applicant.

- 23 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 of his intention to recover possession of the property. The Tribunal therefore considered whether ground 4 of schedule 3 of the 2016 Act had been met in this case.
- 24 The Tribunal accepted that the Applicant was the registered owner of the property under Title Sheet REN57345, and that his intention to live in the let property was genuine, having considered the terms of his affidavit and the reasons behind said intention which the Tribunal found to be credible. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of that fact, which required the Tribunal to identify factors relevant to reasonableness and determine what weight to give to them.
- 25 The Tribunal gave significant weight to the Applicant's property rights and his reasons for wishing to move back into the property. It was clear that his current accommodation was no longer suitable following the end of his relationship with his partner, and her son's return, which had led to overcrowding. The let property had been his previous home and the Tribunal understood his wish to return to live there.
- 26 The Tribunal also carefully considered the Respondent's circumstances. The information the Tribunal had in this regard was limited to the submissions from Mr Lind at the CMD as the Respondent had chosen not to participate in the proceedings. However, the Tribunal found Mr Lind's submissions to be clear and straightforward. He clearly had knowledge of the circumstances pertaining to this case.
- 27 The Tribunal therefore accepted that the Respondent resided in the property with her adult daughter. The Tribunal also accepted that the property no longer appeared to be suitable for her needs, and she was seeking rehousing with the local authority. Whilst the general impact of eviction on the Respondent and her daughter was a concern, the Tribunal was aware that the making of the order would likely assist the Respondent in progressing her application for council housing.
- 28 Accordingly, having weighed the above factors as relevant to reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 29 The Tribunal therefore determined that ground 4 was 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.

R.O'Hare

2 May 2025

Date

Legal Member/Chair