



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/24/3253

Re: Property at 12 Flat 9 Garland Place, Dundee, DD3 6HE (“the Property”)

Parties:

Mrs June Bedding, 16 Willow Park, Haywards Heath, West Sussex, RH16 3UA (“the Applicant”)

Harry Kownacki, Yunmiao Zhang, 12 Flat 9 Garland Place, Dundee, DD3 6HE; 45 Claverhouse Drive, Edinburgh, EH16 6DQ (“the Respondents”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the first respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction against the first respondent relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The order will include a power to Officers of Court to eject Harry Kownacki and family, servants, dependants, employees, and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application accepted on 5 November 2024 the applicant seeks an order for possession relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. The application included the following documents:

- Copy tenancy agreement
 - Section 11 notice
 - Notice to leave and proof of service
 - Rent statement
 - Estate agency mandate in favour of Gilson Gray LLP
3. A case management discussion (“cmd”) was scheduled for 29 April 2025. The second respondent’s representative submitted the following documents in advance of the cmd:
- Written submissions
 - Email correspondence between the second respondent and the applicant’s letting agents, Rockford Properties.
 - Non-harassment order dated 16 May 2024
 - Email correspondence between the second respondent’s legal representative and Rockford Properties.

Case management discussion – 29 April 2024 – teleconference

4. The applicant was represented by Hazel Young, Property Manager, Rockford Properties. Georgia Bedding, the applicant’s daughter who also works for Rockford Properties was also in attendance. The second respondent was represented by Emma Hamilton, Complete Clarity Solicitors & Simplicity Legal. The first respondent was not present or represented. The Tribunal was satisfied that the first respondent had been served with the papers by Sheriff Officers on 13 March 2025. As notice had been given in terms of rule 24.1 the Tribunal proceeded with the cmd in the absence of the first respondent in terms of rule 29.
5. Ms Young sought an order for eviction against both respondents. Ms Hamilton opposed an order for eviction being granted against the second respondent on the grounds that it was not reasonable to grant an order against her as she had not resided in the property since 18 February 2024 and has no intention of returning to the property.

Facts not in dispute

6. It was not in dispute that the respondents had entered into a private residential tenancy with a commencement date of 19 July 2022. The second respondent had left the property on 18 February 2024 after her relationship with the first respondent had broken down. The second respondent had not resided in the property since 18 February 2024 however she had agreed to pay her share of the rent until the notice to leave had expired on 11 July 2024.
7. It was not disputed that a notice to leave specifying ground 1 – landlord intends to sell, was sent to the respondents' email addresses on 15 April 2024. The notice to leave stated that an application would not be submitted prior to 11 July 2025.
8. It was not disputed that the applicant had an intention to sell the property.

Summary of submissions at the case management discussion

9. Ms Young sought an order for eviction against both respondents. Ms Young referred to the bundle of emails that had been submitted by Ms Hamilton, She stated that the second respondent had emailed Rockford Properties on 14 February 2024 to say that she would be leaving the property as she was moving to Edinburgh. The letting agents responded stating that it was not possible for the second respondent to end the tenancy alone and that the first respondent would also require to email to give notice to end the tenancy. An email was subsequently received from the first respondent on 16 February 2024 stating that he was giving notice that he wanted to end the tenancy. Ms Young stated that the letting agents subsequently became aware that the email had not been sent by the first respondent as he had been in custody at the time the email was sent. Ms Bedding stated that she had spoken to the first respondent who had stated that the second respondent had sent the email without his consent. She stated that the second respondent had fraudulently sent an email without the first respondent's consent. Ms Bedding stated that she had asked the first respondent on a number of occasions whether he wished to enter into a new tenancy agreement as the sole tenant or add someone else to the tenancy agreement as the second respondent had moved out. He had not responded and no formal change was made to the agreement. Ms Young and Ms Bedding stated that as the first respondent had not given notice the tenancy had not

ended and a joint tenancy agreement remained in place. Ms Bedding stated that an eviction order was sought against both respondents as the applicant was concerned that if the order was only against the first respondent there was a risk that the second respondent would be in the property which would prevent an eviction being carried out. This would leave the applicant having to start the eviction process again. Ms Bedding stated that this had happened in a separate eviction application raised by the applicant against other tenants. Ms Bedding stated that she had sought legal advice on the situation and was clear that a joint tenancy remained in place. Ms Young noted that the name on the non-harassment order had a different first name to the first respondent. She queried whether this was evidence that the first respondent was the subject of the non-harassment order. Ms Bedding stated that the fact that the second respondent was so concerned not to have an eviction order against her was hard to understand and a cause for concern and was a further reason why the applicant sought an order naming both respondents.

10. Ms Hamilton stated that the second respondent's position was that she had sent an email to the letting agents on 16 February 2024 giving notice on the first respondent's behalf as he had requested her to do so whilst he was in custody. She stated that the second respondent had moved to a new address and was settled there. She had no intention of returning to the property. She stated that the second respondent had been the victim of serious domestic abuse at the property. She stated that the non-harassment order was evidence that the second respondent would not return to the property. Ms Hamilton stated that the second respondent had paid her share of the rent for the property up until the notice to leave had expired. She stated that the second respondent had complied with the notice to leave and had left the property on 18 February 2024 well before the notice had expired. It was therefore not necessary or reasonable for an eviction order to be taken against her. Ms Hamilton stated that her client was a victim of domestic abuse and had to leave the property as a result. She had done nothing wrong and felt strongly that she did not want to be tied to the first respondent in having an eviction order granted against her when she had not resided at the property since February 2024.

11. Both parties stated that they did not seek an evidential hearing to be fixed on the question of whether an order should be granted and asked that a decision be made on the application at the case management discussion.

Findings in fact

12. Parties entered into a private residential tenancy agreement with a commencement date of 19 July 2022.
13. Monthly rent is £880.
14. The second respondent emailed Rockford Properties on 14 February 2024 stating that she would be moving out of the property on 18 February 2024.
15. The second respondent emailed Rockford Properties on 15 February 2024 stating that she wished to give one month's notice to terminate the tenancy.
16. The second respondent emailed Rockford Properties on 17 February 2024 stating that the first respondent would not be able to confirm whether he was leaving the property as he was in custody as a result of assaulting the second respondent.
17. The second respondent moved out of the property on 18 February 2024.
18. The first respondent did not give notice that he intended to leave the tenancy or confirm that he wished to enter into a fresh tenancy agreement after the second respondent moved out.
19. A notice to leave was emailed to the respondents on 15 April 2024 specifying ground 1.
20. The second respondent continued to pay one half of the rent due under the tenancy agreement until the expiry of the notice to leave on 11 July 2024.
21. The second respondent was the victim of domestic abuse at the property.
22. A non-harassment order was granted on 16 April 2024 preventing "Angelina Kownacki" residing at the property from making any contact with the second respondent for 2 years.
23. No rent has been paid since July 2025.
24. The second respondent has secured settled alternative accommodation.
25. The applicant intends to sell the property.

Findings in fact and law

26. The Tribunal is satisfied that the facts required in Ground 1 of schedule 3 of the 2016 Act have been established.
27. The Tribunal is satisfied that it is reasonable to make an order for eviction against the first respondent. The Tribunal is not satisfied that it is reasonable to make an order for eviction against the second respondent.

Reasons for Decision

28. Rule 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

29. The Tribunal first considered whether the application could be determined without a hearing. The Tribunal took into account that both parties requested that the application be dealt with at the cmd without the need for a full evidential hearing. The Tribunal considered that while there was some distance between parties in relation to the question of whether the second respondent had been authorised to send an email giving notice on behalf of the first respondent while he was in custody the other facts were largely not in dispute. The Tribunal considered that it had sufficient information that was not in dispute to make a determination. The Tribunal took into account that the arrears in the property

had been increasing since July 2024. Fixing a hearing would result in further delay of approximately 3 months before a decision would be made during which arrears would further increase. The Tribunal determined that it was in the interests of justice to make a decision without the need for an evidential hearing.

30. Ground 1 states:

(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,

(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.

31. The Tribunal had regard to the application, written submissions and the documents lodged by the parties' representatives. The Tribunal also took into account the oral submissions made on behalf of the parties at the cmd .

32. The Tribunal accepted the evidence that had been submitted including a sales mandate in favour of Gilson Gray LLP that the applicant intended to sell the property. This was not disputed by the respondents.

33. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. It is well established that in determining whether it is reasonable to grant an order all relevant circumstances are taken into account, including personal circumstances, *Barclay v Hannah* 1947 SLT 235 and *Cumming v Danson* 2 ALL ER 653. In assessing whether it is reasonable

to grant an order all available facts relevant to the decision required to be considered and weighed in the balance, for and against.

34. The Tribunal gave weight to the fact that the applicant sought to sell the property as she wished to release the equity to cover her living expenses. In relation to the first respondent the Tribunal gave particular weight to the fact that he had not submitted any defence to the application or attended the Tribunal to oppose the application. The Tribunal also gave weight to the fact that the first respondent had failed to engage with the applicant's letting agents after the second respondent had moved out to arrange for the tenancy to be put in his sole name. This meant that the second respondent had continued to pay rent until the notice to leave had expired. The Tribunal also gave weight to the fact that the first respondent continued to live in the property after the expiry of the notice to leave on 11 July 2025 without paying any rent. The arrears continued to rise. The Tribunal were satisfied that in light of the foregoing circumstances it was reasonable to grant an order for eviction against the first respondent.
35. In relation to the second respondent, it was not disputed that she had not resided in the property since February 2024. The applicant's primary reason for seeking an order against the second respondent was as security in the event that she decided to return to the property. The Tribunal accepted the submissions from Ms Hamilton that the second respondent had no intention of returning to the property. The Tribunal gave significant weight to the fact that a non-harassment order had been submitted specifying that an individual with the surname Kownacki residing at the property was barred from contacting the second respondent for 2 years. While the first name on the non-harassment order was different from the first respondent's the dates coincided with the period when the second respondent had left the property due to domestic violence and tied the non-harassment order to the address of the property. The Tribunal considered that the fact that the second respondent had sought a non-harassment order was clear evidence that she had no intention of returning to the property. The Tribunal took into account that the order was to be granted under ground 1 which did not suggest any poor conduct on the part of the second respondent, if she was named on the order, however against that the Tribunal accepted the submissions from Ms Hamilton that the second

respondent had moved to a new property and did not wish to be connected to her previous partner on an eviction order when she had not lived in the property for over 14 months. The Tribunal gave some weight to Ms Bedding's submissions that she thought the second respondent had acted fraudulently in sending an email on behalf of the first respondent however, there was no clear evidence that was the case with the 2 respondents each providing conflicting information. In light of the first respondent's conduct and his failure to attend the cmd any weight attached to information provided by him to Ms Bedding was limited. In the circumstances the Tribunal being satisfied that the second respondent had no intention of returning to the property and taking into account her history at the property determined that it was not reasonable in all the circumstances to grant an order against her.

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.

M-C Kelly

Legal Member/Chair

29 April 2025
Date