



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/24/4986

Re: Property at 129 Mollace Avenue, Armadale, West Lothian, EH48 2QD (“the Property”)

Parties:

Mr Darren Roberts, 80 Rashierigg Place, Longridge, West Lothian, EH47 8AT (“the Applicant”)

Mr John Dolan, Jennifer Stevenson, 129 Mollace Avenue, Armadale, West Lothian, EH48 2QD (“the Respondents”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (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 and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act. The Tribunal further determined to suspend execution of the order for a period of two months.

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 as the ground for possession, 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 14 May 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 first Respondent by sheriff officers on 4 March 2025, and on the second Respondent by sheriff officers on 3 April 2025. All parties were invited to make written representations.
- 3 No written representations were received from any party in advance of the CMD.

The CMD

- 4 The CMD took place on 14 May 2025 at 2pm by teleconference. The Applicant and both Respondents joined the call.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 24 October 2024;
 - (ii) Title sheet WLN36519;
 - (iii) Excerpt from the online landlord register confirming the Applicant’s landlord registration;
 - (iv) Notice to leave dated 10 May 2024 together with signed acknowledgement of receipt by the Respondents;
 - (v) Section 11 notice to West Lothian Council together with proof of delivery by email dated 22 October 2024; and
 - (vi) Valuation report by Slater Hogg and Howison.
- 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 parties. 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 The Applicant explained that he had owned the property since 2007, having bought it as an investment for his retirement. This is the only rented property which he owns, The Respondents had taken on the tenancy in 2022. The Applicant lived with his wife and his 11 year old daughter who was disabled. The Applicant advised that both he and his wife had been forced to retire early from their employment due to ill health. Their income had reduced to approximately one third of what it had been when they were both in work. His wife received a pension and he was in receipt of employment support allowance. The Applicant explained that they were currently relying upon savings but these would only last until the end of the year. The Applicant therefore required to sell the property to release funds for retirement. The Applicant confirmed that he had engaged an estate agent and a solicitor to deal with the sale of the property. There was a mortgage over the property on a fixed rate, which was due to expire in November 2025 at which time the monthly mortgage payment would increase.

- 8 Mr Dolan spoke on behalf of the Respondents. He confirmed that they did not object to the eviction order. They had almost finished packing up the house. They had spoken with West Lothian Council and planned to present as homeless following the granting of the eviction order. The council had advised that they would be rehoused in temporary accommodation if a permanent home was not available. The council was unable to give a timescale as to when they would be offered a permanent home. Mr Dolan confirmed that he and Ms Stevenson resided in the property with their three children, aged 2, 8 and 12. Their 2 year old son had mobility issues and used a wheelchair on occasion. Their other two children had mental health conditions. Ms Stevenson also had various health conditions. The council had agreed that they would not be rehoused in hotel accommodation as a result. Ms Stevenson felt her children would be able to cope with temporary accommodation if it was not a hotel.
- 9 The Tribunal asked the parties for comments on whether or not the Tribunal should suspend enforcement of the order. Mr Roberts had no objection to this. He confirmed that he would be happy to delay enforcement to allow the Respondents time to find a suitable property. Mr Dolan and Ms Stevenson advised that they were keen for the order to be granted by the Tribunal so that they could move on.
- 10 Having heard from the parties the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

- 11 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

- 12** The Applicant is the heritable owner of the property. The Applicant is a registered landlord.
- 13** The Applicant and the Respondents entered into a private residential tenancy agreement in respect of the property, which commenced on 13 July 2022.
- 14** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 15** On 10 May 2024, the Applicant hand delivered a notice to leave to the Respondents.
- 16** The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 14 August 2024.
- 17** On 22 October 2024 the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to West Lothian Council by email.
- 18** The Applicant intends to market the property for sale within three months of the Respondents vacating. The Applicant has instructed solicitors and an estate agent to progress the sale.
- 19** The Applicant intends to sell the property to release funds for his retirement. The Applicant and his wife have both retired early from their employment due to ill health. Their household income has significantly reduced as a result. The Applicant and his wife are currently relying upon savings, which will run out towards the end of this year.
- 20** The Applicant and his wife reside with their 11 year old daughter who is disabled.
- 21** The Respondents reside in the property with their three children, aged 2, 8 and 12. The second Respondent and the children suffer with various health conditions.
- 22** The Respondents will present as homeless to West Lothian Council if an eviction order is granted. The Respondents wish to obtain a permanent tenancy with the local authority.

- 23** The Respondents do not object to the granting of an eviction order.

Reasons for Decision

- 24** 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 parties. It was clear that the Respondents did not dispute the terms of the application and there were therefore no issues to be resolved that would require a hearing. The parties evidently maintained an amicable relationship and a mutual understanding of each other's circumstances.
- 25** Although the Applicant had been unable to produce a copy of the tenancy agreement between the parties, the Tribunal accepted that the tenancy had commenced in July 2022 and was therefore a private residential tenancy. The Respondents did not dispute this. The Tribunal further accepted, based on the application paperwork, that the Respondents 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 WLN36519. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondents having vacated. The Applicant's reasons for doing so were credible based on the circumstances he had outlined at the CMD.
- 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 him to dispose of the property, and his reasons for doing so. The Tribunal accepted that both he and his wife had been forced to retire due to ill health, which had led to a significant drop in their income. They were at risk of running out of funds if the property was not sold. They required the sale proceeds in order to support themselves and their daughter. These were all factors to which the Tribunal gave significant weight.
- 29** The Tribunal carefully considered the Respondents' circumstances. The Tribunal had concerns about the impact of eviction on the Respondents' family, particularly in light of the age of their children and their various health conditions. However, the Tribunal gave most weight to the fact that the Respondents did not object to the eviction order. They were keen to move on,

and the making of the order would assist them in that regard by enabling them to present as homeless to the local authority.

- 30** The Tribunal was however aware of the housing shortage and the challenges the local authority would likely face in finding a suitable home for the Respondents' family. The Tribunal therefore considered it would be reasonable to suspend execution of the order for a period of two months to provide the local authority with sufficient time to rehouse the Respondents and their children in suitable alternative accommodation. The Applicant had been clear that he did not oppose this.
- 31** Accordingly, taking the above into account as factors 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 with execution of the order suspended for a period of two months.
- 32** 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

14 May 2025

Legal Member/Chair

Date