



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/24/5008

Re: Property at 70 Captains Drive, Gracemount, Edinburgh, EH16 6QG (“the Property”)

Parties:

Craig Morrison as Trustee in Sequestration of Lendrick Gillies, c/o Quantuma Advisory Limited, Turnberry House, 175 West George Street, Third Floor, Glasgow (“the Applicant”)

Tracey Pugh, 70 Captains Drive, Gracemount, Edinburgh, EH16 6QG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (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 in this case and that 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 the execution of the order for a period of three months.

Background

- 1 This is an application for an eviction order under rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 51 of the 2016 Act. The Applicant relied upon ground 1 as the ground for possession, stating that the Applicant intended to sell the property.

- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 21 May 2025. The Tribunal gave notification of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 18 March 2025. Both parties were invited to make written representations.
- 3 On 1 April 2025 the Tribunal received an email from Mr Sam Donegan of Community Advice and Health Initiative (“CHAI”). Mr Donegan confirmed that CHAI would be representing the Respondent in the Tribunal proceedings. He provided a written mandate from the Respondent in support of this.
- 4 On 20 May 2025 the Tribunal received a further email from Mr Donegan advising that the parties had agreed to a delay in the enforcement of the eviction order of 3 months.

The CMD

- 5 The CMD took place on 21 May 2025 at 10am by teleconference. Mr Gray of Gilson Gray LLP represented the Applicant. Mr Donegan of CHAI represented the Respondent.
- 6 The Tribunal had the following information before it:-
 - (i) Form E application form dated 23 October 2024 and paper apart;
 - (ii) Title sheet MID45947 confirming Lendrick Gilles as the registered owner of the property;
 - (iii) Excerpt from the online landlord register confirming that the landlord registration for the property had expired;
 - (iv) Private residential tenancy agreement between Lendrick Gilles and the Respondent dated 13 March 2018;
 - (v) Notice to leave dated 29 July 2024 together with proof of service upon the Respondent by sheriff officers on 30 July 2024;
 - (vi) Section 11 notice to Edinburgh City Council together with proof of delivery by email dated 23 October 2024;
 - (vii) Extract from the Register of Insolvency; and
 - (viii) Estate agency mandate between Gilson Gray Property Services LLP and the Applicant pertaining to the sale of the property.
- 7 The Tribunal heard submissions from the parties on the application. For the avoidance of doubt the following is a summary of the key elements of the submissions and does not constitute a verbatim account of the proceedings.
- 8 Mr Gray adopted his written submissions in the paper apart to the application. He confirmed that parties were in agreement as to a three month suspension of the eviction order. In response to questions from the Tribunal, he explained that the Applicant had considered selling the property with a sitting tenant. However, the Applicant had a duty to obtain the best price for the property for the creditors of Lendrick Gilles. A sale with a sitting tenant would not generate the maximum value, and would likely only attract cash buyers therefore reducing the pool of

prospective purchasers. Mr Gilles owned between 30 and 40 rental properties and the Applicant had determined that all of them should be sold.

- 9 Mr Donegan explained that the Respondent resided in the property with two daughters aged 24 and 15, a son aged 19 and a granddaughter aged 8. The Respondent's 15 year old daughter was currently sitting her exams and her granddaughter was being assessed for neurodivergent conditions. The Respondent herself had a longstanding psychiatric mental health condition. The Respondent was seeking rehousing with the local authority but had been told that she would not be prioritised for housing until the Tribunal made an eviction order. Given the makeup of the Respondent's household, it would take time for the local authority to source suitable accommodation. A suspension of the enforcement of the order would avoid the family having to separate or rely on emergency accommodation, such as hotels. Mr Donegan confirmed that he had fully advised the Respondent regarding her rights in respect of the application.
- 10 The Tribunal adjourned the CMD to deliberate before resuming the discussion and confirming the outcome.

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 registered owner of the property is Lendrick Gilles. On 13 March 2018 Lendrick Gilles entered into a tenancy agreement with the Respondent in respect of the property. The tenancy between the parties commenced on 14 March 2018.
- 13 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 11 June 2024 Lendrick Gilles was sequestrated by the Accountant in Bankruptcy. The Applicant was appointed to act as the trustee of Lendrick Gilles under section 78(1) of the Bankruptcy (Scotland) Act 2016.
- 15 The Applicant requires to sell the property. The property has a mortgage with significant arrears.
- 16 The heritable creditor has served calling up notices with a view to repossession of the property. The Applicant has agreed with the heritable creditor that he will instead facilitate the sale to avoid repossession by the heritable creditor. The sale of the property by the Applicant will allow for the sale proceeds to be distributed amongst the creditors of Lendrick Gilles, once the mortgage has been repaid.
- 17 On 30 July 2024 the Applicant served a notice to leave upon the Respondent by sheriff officers.
- 18 The notice to leave cited ground 1 and stated that the Applicant would not apply to the Tribunal for an eviction order any earlier than 23 October 2024.
- 19 The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 20 The Applicant has instructed Gilson Gray Property Services LLP to market and sell the property once vacant possession has been obtained.
- 21 The Applicant has considered selling the property with the Respondent in situ. The sale of the property with a sitting tenant would not achieve the maximum sale price. The Applicant has a duty to obtain best value for the creditors of Lendrick Gilles.
- 22 The Respondent resides in the property with two daughters aged 24 and 15, a son aged 19 and a granddaughter aged 8. The Respondent's 15 year old daughter is presently sitting her school exams. The Respondent's 8 year old

daughter is undergoing assessment for a neurodiverse condition. The Respondent has a longstanding psychiatric mental health condition.

- 23 The Respondent has approached the local authority with a view to obtaining council housing. The local authority has advised the Respondent that her application will not be prioritised until the Tribunal makes an eviction order.
- 24 The Respondent does not object to the making of an eviction order, provided the execution of said order is suspended for a period of three months. The suspension will allow time for the local authority to source accommodation for the Respondent and her family.
- 25 The Applicant does not oppose a suspension of the eviction order for a period of three months.

Reasons for decision

- 26 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. It was clear that there were no substantive matters in dispute.
- 27 Based on the application paperwork the Tribunal was satisfied that the tenancy between Lendrick Gilles and the Respondent was a private residential tenancy, and that the Applicant had given the Respondent 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 their intention to recover possession of the property. The Tribunal therefore considered whether ground 1 of schedule 3 of the 2016 Act had been met in this case.
- 28 The Tribunal was satisfied based on the documents before it, and the submissions from Mr Gray at the CMD, that the Applicant was entitled to sell the property as the appointed trustee of Lendrick Gilles, and that he intended to do so within three months of the tenancy vacating. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case.
- 29 The Tribunal took into account the Applicant's property rights. As the trustee of the registered owner of the property, he was entitled to dispose of the property as he saw fit. The Tribunal also took into account his reasons for selling the property. The property was at risk of repossession by the heritable creditor, and the sale of the property by the Applicant would be of greatest benefit to the creditors of Lendrick Gilles, enabling the sale proceeds to be distributed amongst them once the mortgage was repaid. The Tribunal accepted that the Applicant

had considered selling the property with the Respondent in situ, but that to do so would not achieve the best sale price, and fulfil the Applicant's duties towards the creditors. These were all factors to which the Tribunal gave significant weight.

- 30 The Tribunal carefully considered the Respondent's circumstances. The Tribunal noted that she suffered with a psychiatric mental health condition, and took into account her family circumstances. However, the Tribunal gave most weight to the fact that the Respondent had agreed to the making of an eviction order, provided the Tribunal suspended enforcement of the order for a period of three months. She was seeking rehousing with the local authority and they would not prioritise her application for housing until the Tribunal made an eviction order. A suspension of three months would provide the local authority with ample time to source a property for the Respondent and her family, and likely avoid the need for emergency accommodation. The Applicant did not oppose this.
- 31 Accordingly, having weighed the above factors as relevant to the question of reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case.
- 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.

21 May 2025

Legal Member/Chair

Date