

Housing and Property Chamber
First-tier Tribunal for Scotland



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/21/2097

Re: Property at 29 Millhall Crescent, Dundee, Angus, DD2 1TN (“the Property”)

Parties:

Ms Mairi Handy, c/o Ledingham Chalmers LLP, Johnstone House, 52-54 Rose Street, Aberdeen (“the Applicant”)

Ms Lesley Dunsmuir, 29 Millhall Crescent, Dundee, Angus, DD2 1TN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 29 Millhall Crescent, Dundee, Angus, DD2 1TN under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth 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 dated 29 August 2021 the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a Private Residential Tenancy Agreement dated 11 May 2018 between the parties, a Notice to Leave dated 25 February 2021 with a letter dated 23 February 2021 from Thorntons solicitors, a certificate of execution of service from Sheriff Officers dated 25 February 2021, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 30 August 2021 and a letter dated 24 August 2021 from Thorntons solicitors
3. In response to a letter dated 13 September 2021 from the Tribunal requesting further information, the Applicant's solicitors forwarded the further information requested to the Tribunal on 14 September 2021.
4. On 30 September 2021, the Tribunal accepted the application under Rule 9 of the Regulations.
5. On 6 October 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 11 November 2021. The Respondent required to lodge written submissions by 27 October 2021. This paperwork was served on the Respondent by Richard Rance, Sheriff Officer, Dundee on 6 October 2021 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion on 11 November 2021 by way of teleconference. The Applicant was represented by Ms Walker from Messrs Ledingham Chalmers, solicitors. The Applicant was also in attendance. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 11 May 2018 between the parties, a Notice to Leave dated 25 February 2021 with a letter dated 23 February 2021 from Thorntons solicitors, a certificate of execution of service from Sheriff Officers dated 25 February 2021, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 30 August 2021, a letter dated 24 August 2021 from Thorntons solicitors and a letter dated 14 September 2021 from Ledingham Chalmers.
8. Ms Walker moved the Tribunal to grant an Order to evict the Respondent. The Tribunal noted the Notice to Leave dated 25 February 2021 which relied on Ground 1 of Schedule 3 of the 2016 Act was accompanied and referred to a letter dated 23 February 2021 from Thorntons solicitors which showed the Applicant had instructed Thorntons to sell the Property. She advised that it was the Applicant's intention to sell the Property as soon as possible and within 3 months of any order being granted. She was using Thorntons

solicitors in the sale who were a reputable firm. She further submitted the application was unopposed. explained the letter dated 23 February 2021 from Thorntons solicitors confirmed the Applicant was intending to sell the Property. She submitted the facts satisfied ground 1 of Schedule 3 of the 2016 Act.

9. The Tribunal had also noted Ms Walker's written submissions in the letter of 14 September 2021 that the Notice to Leave had been effectively served by Sheriff Officers by personal service on the Respondent. Whilst clause 2 of the tenancy agreement provided for service by email that did not preclude the use of other valid methods of service. The wording of clause 2 was permissive but it did not prescribe the only method of service was by email. Service by Sheriff Officers was unequivocally achieved by Sheriff Officers effecting personal service on the Respondent.
10. In relation to whether it was reasonable to evict she submitted the Applicant had owned the Property for some time. However the market had dipped and she could no longer afford the Property. She submitted the Respondent was a single person and lived alone at the Property. She was on housing benefit and had at some stage advised the local authority she had left the Property. The Applicant understood the Respondent was looking to the Council to assist in finding a property. There had been no contact with the Respondent who was aware of the Applicant's intention to sell. In all the circumstances she submitted it was reasonable that the order to evict be granted.

Findings in Fact

11. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 11 May 2018 in relation to the Property.
12. The Applicant owns the Property. The Applicant intends to put the Property up for sale as soon as she gains repossession of it. The letters dated 23 February and 25 August 2021 from Thorntons solicitors indicate they will deal with the sale of the Property.
13. The Applicant served a Notice to Leave on the Respondent 25 February 2021. The Notice to Leave was served personally on the Respondent by Sheriff Officers on 25 February 2021. The Notice to Leave required the Applicant to leave the Property by 29 August 2021. The Notice to Leave relied on ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
14. The Respondent is a single person who lives alone at the Property.
15. The Applicant can no longer afford to keep the Property and requires to sell it.

16. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Dundee City Council on 30 August 2021.

Reasons for Decision

17. The Tribunal considered the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 in its determination.

Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020

Section 51 (1) of the 2016 Act provides 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.

Section 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

(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

(3B) 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) 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.

Ground 1 in Schedule 3 of the 2016 Act -Landlord intends to sell

- 1(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.

18. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Applicant intends to sell at market value or at least put the Property up for sale within 3 months of the Respondent ceasing to occupy it. Ground 1 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
19. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
20. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice and is accompanied by the letter from Thornton's dated 23 February 2021 which is referred to at Part 3 of the Notice, all relating to Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2)(c)(iii).
21. The application is based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 1 and 2. In terms of Section 54(2)(c)(iii) the notice period of the Notice to Leave is six months.
22. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. Section 64(5) assumes a tenant will receive the Notice to Leave 48 hours after it is sent. In this case the Notice to Leave was served personally on the Respondent by Sheriff Officers on 25 February 2021. Whilst the Tribunal noted the terms of clause 2 of the tenancy agreement that service was permitted by way of email the Tribunal was satisfied on Ms Walker's written submissions in relation to service by Sheriff Officers were valid. The execution of service was included with the application. Clause 2 does not preclude other valid methods of service. In relation to service of documents the Tribunal considered the terms of Section 26 of the Interpretation and

Legislative Reform (Scotland) Act 2010. Section 26 (1) applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression “serve”, “give”, “send” or any other expression is used). In terms of Section 26 (2)(a) a document may be served on the person by being delivered personally to the person. The Tribunal was accordingly satisfied the Notice to Leave had been validly served on 25 February 2021 by Sheriff Officers.

23. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 29 August 2021. The application was made on 29 August 2021. In the circumstances the Tribunal is satisfied the Respondent has been given more than sufficient notice of six months in terms of the 2016 Act. Accordingly the Notice to Leave complies with Section 62.
24. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely ground 1.
25. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Walker. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Walker that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as possible when she obtained possession.
26. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it. The Applicant needed to sell the Property as she could no longer afford to keep it. The Respondent was a person who lived alone at the Property. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
27. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

28. The Tribunal granted an order for repossession. 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.

Shirley Evans

Legal Chair

11 November 2021

Date