



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/22/4456

Re: Property at Flat 1/L, 8 Argyle Street, Rothesay, PA20 0AT (“the Property”)

Parties:

Skipton Building Society, The Bailey, Skipton, North Yorkshire, BB23 1DN (“the Applicant”)

Mr Amrik Singh, Mrs Cheryl Singh, Flat 1/L, 8 Argyle Street, Rothesay, PA20 0AT (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondents

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between Martin John Robertson and the Respondents;
 - (ii) Notice to Leave dated 4 August 2022 stating that proceedings for possession will commence no earlier than 4 November 2022 and citing ground 2, together with proof of service on the Respondents by Sheriff Officers;

- (iii) Notices under section 11 of the Homelessness (Scotland) Act 2003 to Argyll and Bute Council dated 13 January 2022, 5 April 2022 and 20 December 2022 together with proof of service by emails;
 - (iv) Notice by Creditor
 - (v) Form BB Notice to the Occupier dated 13 January 2022 together with proof of service by recorded delivery mail; and
 - (vi) Extract Decree from Greenock Sheriff Court against Martin John Robertson in favour of the Applicant.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 24th March 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 24 March 2023. The Applicant was represented by Ellen Masters, Solicitor of Aberdeen Considine and a trainee solicitor as an observer. The Respondents were not in attendance. The Tribunal noted that they had been served with the application paperwork which included the date and time of the Case Management Discussion, and instructions for joining the teleconference. The Tribunal therefore determined to proceed in their absence.
- 4 The Tribunal asked the Applicant's representative to address the Tribunal on the Applicants' position regarding the matter. Ms Masters advised that the Applicant held a heritable security over the property and had obtained a decree for repossession from Greenock Sheriff Court following the service of a calling up notice. The Respondents hadn't paid any rent since December 2021 and there had been no mortgage payments from the owner since December 2020. The Applicant had been in telephone contact with the Respondents on 4 August 2022 to confirm their identities. A neighbour had confirmed their residence in November 2022 and it was unclear as to whether they had since left the property.

Relevant Legislation

- 5 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

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 2

Landlord intends to sell

(1) It is an eviction ground that a lender intends to sell the let property.

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

(a) the let property is subject to a heritable security,

(b) the creditor under that security is entitled to sell the property, and

(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession.

- 6 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application. For the avoidance of doubt the Cost of Living (Tenant Protection) (Scotland) Act 2022 is not relevant to this application which proceeds under part 2 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016.

Findings in Fact and Law

- 7 The Respondents entered into a Private Residential Tenancy Agreement with Martin John Robertson which commenced on 1 January 2018.

- 8 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 9 The property at Flat 1/L, 8 Argyle Street, Rothesay which is the subject of the tenancy is subject to a standard security in favour of the Applicant.

- 10 On 16 June 2022 the Applicant obtained a decree from Greenock Sheriff Court against Martin John Robertson.
- 11 The said decree entitles the Applicant to enter into possession of, and sell, the property at Flat 1/L, 8 Argyle Street, Rothesay.
- 12 On 11 August 2022 the Applicant delivered a Notice to Leave to the Respondents by Sheriff Officers. The Notice to Leave cited ground 2 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 4 November 2022.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 On 20 December 2022 the Applicant served a notice under section 11 of the Homelessness etc (Scotland) Act 2003 upon Argyll and Bute Council.
- 15 The Applicant requires the Respondents to vacate the property at Flat 1/L, 8 Argyle Street, Rothesay in order to sell said property with vacant possession.
- 16 The provisions of ground 2 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 17 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so.
- 18 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 2 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 19 Based on its findings in fact the Tribunal was satisfied that the property was subject to a heritable security, that the Applicant was entitled to sell the property and that they required the Respondents to vacate in order to gain vacant possession. There was nothing before the Tribunal to contradict the evidence put forward by the Applicant.

20 The Tribunal therefore determined to make an order for eviction against the Respondents. 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.

24 March 2023

Legal Member/Chair

Date