



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/21/0545

Re: Property at 80 Waterside, Irvine, KA12 8QJ (“the Property”)

Parties:

Mrs Elizabeth Crichton, Mas Nivera Poligono 2, Parcela 109 Apartado 32, Camarles 43894, Tarragona, Spain (“the Applicant”)

Landlord Agents Ltd, 15 Tippet Knowes Park, Winchburgh, EH52 6UR (“the Applicant’s Representative”)

Miss Susan Hutchison, 80 Waterside, Irvine, KA12 8QJ (“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 to make an eviction order

Background

- 1 By application dated 25 February 2022 the Applicant applied to the Tribunal for an order for repossession against the Respondent 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) Copy Private Residential Tenancy Agreement between the parties dated 22 February 2020 and 26 June 2020;
 - (ii) Notice to Leave dated 19 July 2021 stating that proceedings for possession will commence no earlier than 22 January 2022 and citing ground 1, together with proof of postage by Spanish mail dated 20 July 2022;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Ayrshire Council;
 - (iv) Copy Letter from Ayrshire Lettings and Sales with terms of instruction dated 11 April 2022;
 - (v) Copy Letter from Anderson, Shaw and Gilbert Solicitors and Property Agents dated 1 March 2021; and
 - (vi) Copy email correspondence between Shepherd Surveyors and the Applicant dated 18 April 2021 and 11 April 2022 regarding instruction of home report.
- 2 The Tribunal was also in receipt of the Land Certificate for the property under Title Number AYR121636 which confirmed the registered owner as the Applicant.
 - 3 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 13 July 2022, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. 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 on 26 May 2022. The Respondent contacted the Tribunal by email on 15 June 2022 to advise that she was seeking advice from Chap, a local housing advice agency.
 - 4 On 15 July 2022 the Tribunal received an email from Mr Alistair Meek from Chap who confirmed he had been instructed to represent the Respondent and would attend the Case Management Discussion on her behalf. He provided a mandate from the Respondent to this effect.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 13 July 2022. Mr Jeffrey Livingstone appeared on behalf of the Applicant, who was also present on the call but not participating. Mr Alister Meek appeared on behalf of the Respondent who was not present.
- 6 The Legal Member explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. She then asked the parties to address the Tribunal on the application.

- 7 Mr Livingstone confirmed that the Applicant had submitted the application in February and was seeking to recover the property. She was in severe financial difficulties and struggling to sustain the property with her current income. She therefore required to dispose of the property to relieve the financial strain on herself and her husband. Mr Livingstone explained that the property was now believed to be in disrepair. The Applicant had previously obtained a home report but this had now expired. She required vacant possession to identify what work required to be done prior to instructing a further home report and putting the property on the open market. Mr Livingstone confirmed that the Applicant had sought to recover possession of the property back in 2021 when the previous home report was instructed however the Notice to Leave was invalid and had been withdrawn. Mr Livingstone confirmed that the proof of service submitted for the Notice to Leave was a recorded delivery receipt from the Spanish postal service.
- 8 Mr Meek explained that he had discussed the application with the Respondent. She had applied for housing with the local authority and was expecting an offer imminently. Accordingly she did not dispute the granting of the order. He confirmed that the Respondent had received the Notice to Leave and was content that she had all the correct paperwork.

Relevant Legislation

- 9 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 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

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 and Law

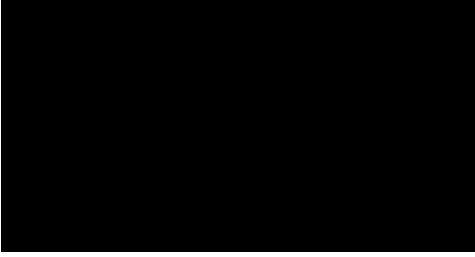
- 10 The parties entered into a Private Residential Tenancy Agreement which commenced on 26 June 2019.
- 11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 12 On 20 July 2021 the Applicant's Representative delivered a Notice to Leave to the Respondent by recorded delivery mail. The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 22 January 2022.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 The Applicant is the registered owner of the property.
- 15 The Applicant therefore has title to sell the property.
- 16 The Applicant requires to sell the property as a result of her ongoing financial difficulties.
- 17 The Respondent has applied for local authority housing and expects to receive an offer of accommodation.
- 18 The Respondent does not object to the granting of the order.
- 19 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 20 It is reasonable to make the order sought by the Applicant.
- 21 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 22 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.
- 23 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave had been sent to the Respondent on 20 July 2021 and confirmed that the earliest date on which proceedings would be raised would be 22 January 2022. The Tribunal was therefore satisfied that the six month period required under section 54 of the Act had been complied with.
- 24 The Tribunal was further satisfied on the basis of its findings in fact that the Applicant had title to sell the property and intended to do so within three months of the Respondent having vacated. She was doing so in order to improve her financial difficulties. The Tribunal accepted that her intention was genuine in this regard, based on her written representations and submissions made by Mr Livingstone at the Case Management Discussion. The Tribunal therefore had to consider whether it was reasonable in the circumstances of the case to make the order.
- 25 The Tribunal noted that the Respondent had applied for accommodation with the local authority and was expecting to receive an offer. She did not object to the granting of the order on that basis. She had received advice from Mr Meek regarding her position in that regard. The Tribunal was therefore satisfied that she had been fully informed in reaching her position on the matter.
- 26 On the basis of there being no objection from the Respondent, and having regard to the Applicant's circumstances, the Tribunal concluded that it would be reasonable to make the order.
- 27 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.



Legal Member/Chair

13 July 2022

Date