



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/22/3313

Re: Property at 8 Beaulay Court, Hallglen, Falkirk, FK1 2QP (“the Property”)

Parties:

Mr Paul Nelson, 5 Forest Park, Wishaw, ML2 8PN (“the Applicant”)

Ms Dianne Wilson, 8 Beaulay Court, Hallglen, Falkirk, FK1 2QP (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an eviction order against the Respondent in favour of the Applicant

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent under ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant submitted the following:-
 - (i) Copy Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 9 May 2022, confirming that proceedings would not be raised any earlier than 16 August 2022 and confirming proof of service by hand delivery;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to the local authority together with proof of service by email; and
 - (iv) Copy email from Your Move Estate Agents; and
 - (v) Copy Whatsapp messages between the Applicant and Respondent.

- 2 The Tribunal was also provided with the title sheet for the property which confirmed the Applicant to be the registered owner.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 27 April 2023.
- 4 A copy of the application paperwork together with the date and time of the Case Management Discussion with instructions for joining the teleconference was served upon the Respondent by Sheriff Officers.

Case Management Discussion

- 5 The Case Management Discussion took place on 27 April 2023. The Applicant was present. The Respondent was also in attendance.
- 6 The Tribunal explained that the application had been brought under ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which states that it is an eviction ground that the landlord intends to sell the property. This was the issue the Tribunal required to consider, as well as the reasonableness of granting the order. The Tribunal asked the parties to address the Tribunal on the application.
- 7 The Applicant confirmed that he wished to recover possession of the property in order to sell it. He was letting it out at £300 under market value and making a loss. His financial circumstances had changed in that he had split up with his partner and had to purchase another property. It was not financially viable to continue to let out the property. He had spoken with an estate agent but had not been able to obtain a valuation as the Respondent had not allowed access for this purpose. In response to questions from the Tribunal the Applicant confirmed that he had another property which was occupied by his mother but was in his name. His mother paid the mortgage for that property.
- 8 The Respondent advised that she was not disputing the application. She confirmed that she had applied for rehousing with the local authority but had not yet received an offer. There had been issues with the paperwork that the Applicant had submitted. She had initially spoken with the Council back in March 2022 but her application had not been sorted out until June. She had been in contact with housing providers on a weekly basis and had been bidding on properties but had so far been unsuccessful. Her reason for moving to the property was to be closer to her daughter, who knew the Applicant. She confirmed that she currently resided in the property with a daughter aged 18. She had understood that this would be a long term arrangement and she had carried out renovations to the home as a result. The Applicant had advised her that he was looking to increase the rent from £540 to £900, which was not affordable for her. He then advised that he was going to sell the property.

- 9 In response to questions from the Tribunal the Applicant confirmed his intention to sell the property. He had advised the Respondent that the only way he could not sell the property would be if he increased the rent. He could not keep making a loss. He then made the decision to sell as opposed to a rent increase. He also had to spend money on repairs which left him out of pocket. As soon as he had access to the property he would intend on proceeding with the sale.

Relevant Legislation

- 10 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.

For the avoidance of doubt the Cost of Living (Tenant Protection) (Scotland) Act 2022 is not relevant to this application, it having been received before 28 October 2022, with the Notice to Leave having been served on 9 May 2022.

Findings in Fact and Law

- 11 The parties entered into a Tenancy Agreement in respect of the property which commenced on 1 May 2021.
- 12 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 13 On 9 May 2022 the Applicant hand delivered a Notice to Leave to the Respondent.
- 14 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 16 August 2022.
- 15 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 The Applicant is the registered owner of the property.
- 17 The Applicant therefore has title to sell the property.
- 18 The Applicant has consulted estate agents regarding the sale of the property.
- 19 The Applicant requires to sell the property due to financial pressures.
- 20 The Respondent has applied for alternative accommodation with the local authority.
- 21 The Respondent does not dispute the application.
- 22 The Applicant intends to market the property for sale within three months of the Respondent ceasing to occupy.
- 23 It is reasonable to make the order sought by the Applicant.
- 24 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 25 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. It was clear that there were no matters in dispute that would require a hearing to be fixed. The Respondent did not dispute the terms of the application.

- 26 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 was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.
- 27 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. The Tribunal accepted that his intention was genuine in this regard, based on his submissions in response to the Tribunal's questions 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, which required the Tribunal to balance the various facts and circumstances of the case in order to exercise its judicial discretion in this regard.
- 28 The Tribunal accepted the Applicant's reason for selling the property, namely that he was experiencing financial difficulties. The Tribunal also had regard to the fact that the Respondent was actively seeking alternative accommodation and did not seek to dispute the making of the order. Accordingly having regard to the circumstances of this particular case the Tribunal considered that ultimately the balance of reasonableness weighed in favour of the Applicant. However the Tribunal considered it would be reasonable to suspend enforcement of the order for a period of three months to give the Respondent further time to obtain alternative accommodation, taking into account her efforts to date.
- 29 The Tribunal therefore determined to make an eviction order, with enforcement suspended for a period of three months. 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.

R. O'Hare

27 April 2023

Legal Member/Chair

Date