



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 50(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/0712

Re: Property at Craighill, Seafield Avenue, Keith, AB55 5BS (“the Property”)

Parties:

Mr Alasdair Laughton, Mrs Muriel Laughton, District 7, Jumeriah Park, Villa L63, Dubai, United Arab Emirates (“the Applicant”)

Mr Keith Simpson, Mr Robert Simpson, Mrs Lynette Simpson, Craighill, Seafield Avenue, Keith, AB55 5BS (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for eviction and suspended the date of enforcement of the order until 30 June 2021.

Background

- 1 By application dated 22 March 2021 the Applicants 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) Private Residential Tenancy Agreement dated 24 September 2019;
 - (ii) Section 11 Notice to Moray Council and proof of delivery by email; and

- (iii) Notice to Leave dated 7 December 2020 stating that proceedings for possession will commence no earlier than 21 March 2021 and citing ground 4 together with proof of service by both email and second class post.
- 2 In response to a request from the Tribunal, the Applicant's Representative subsequently provided email correspondence between the Applicant and Respondent, signed Affidavit from Mr Alasdair Laughton confirming the Applicants' intention to return to the property following relocation from Dubai, medical evidence, invoice from Shoreporters and receipt from Moving Systems LLC, proof of air travel and proof of Mr Alastair's Laughton's employment within the Aberdeen area.
- 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 18 May 2021.
- 4 Following service of the application paperwork on the Respondents, the Tribunal received written representations from Ms Sonya Hayward, Moray Citizens Advice Bureau on behalf of the Respondents by emails dated 5 May 2021, 14 May 2021 and 17 May 2021. In summary the Respondents put forward a defence that it would be unreasonable to grant the order on the basis that they were settled in the area, had been advised that this was a long term lease, had started a child minding business from the property and had been unable to find alternative accommodation. In support of the defence Ms Hayward submitted additional documentation including correspondence with Moray Council regarding the Respondents' homelessness application, correspondence between the Respondents, the Applicants and the Applicants' representative and proof of the Respondents' childminding business. The Tribunal also received written representations from Mr Martin Kingdon from Peterkins on behalf of the Applicants by email dated 6 May 2021 in response to the Respondents' written representations.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 18 May 2021. The Applicants were represented by Mr Martin Kingdon. Mr Keith Simpson and Mrs Lynette Simpson were both present. Mrs Lynette Simpson confirmed she was representing the Respondents.
- 6 The Legal Member explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. She then asked parties to address the Tribunal on their respective positions.

- 7 Mr Kingdon explained that the tenancy had come to an end on 21st March 2021. The Applicants were keen to return to their property in Keith. They have provided evidence to show their travel arrangements which confirmed that they were returning to the area from Dubai. Mr Laughton was employed in Blackburn and required to be in commuting distance of his employment. The Applicants' children were also back at school in Keith. Mr Kingdon explained that when the Applicants were in the process of returning to the UK the Respondents had advised that they were struggling to find accommodation and were unable to vacate the property. After isolating as per the UK guidelines the Applicants had to find alternative accommodation. After a short stay in a friend's AirBNB in Inverness they had obtained private rented accommodation near Huntly. However they wanted to return to the family home in Keith as soon as possible. They were presently incurring costs from having items in storage and from renting property.
- 8 The Tribunal then heard from Mrs Lynette Simpson on behalf of the Respondents. Mrs Simpson explained that when they took on the lease in September 2019 they had been clear that they required a long term lease. The plan was to move to the property and save for a mortgage to purchase elsewhere. They had set up their own childcare business from the property. In September 2020, the landlord had plumbers in doing work, who advised the Respondents that the Applicants intended on returning home. The Applicants had subsequently advised that this wasn't the case however a few months later the Respondents received an email confirming that was their intention.
- 9 Mrs Simpson explained that the Respondents had started looking for alternative accommodation when they found out the Applicants were returning. They felt the rug had been pulled from under their feet. They had never experienced being homeless and the worry was overwhelming. Mrs Simpson explained that they had applied to the Council and to housing associations, as well as looking on estate agent websites, Gumtree and Facebook marketplace. Nothing had turned up. They had sought advice from both the Council and Citizens Advice Bureau and had been advised not to leave the property until they had somewhere to go or an eviction notice had been served. Mrs Simpson explained that they had not refused any offers of accommodation from the Council, as the Applicants had suggested. Mrs Simpson explained that the Respondents had now been nominated for a house through Hanover Housing Association. It was in Elgin which was not their preferred location. They and their family had always lived in Keith. However if they were offered the house in Elgin they would take it. They did not want to cause any stress or inconvenience to the Applicants but it was a significant challenge to find accommodation with space for their large family, particularly in the current climate.

- 10 In response to questions from the Tribunal, Mr and Mrs Simpson confirmed that the email they had submitted from Moray Council, which referred to an offer from Hanover Housing Association in mid-June, was related to the property in Elgin they had referred to. Mrs Simpson confirmed that the travel time from Elgin to Keith would depend on traffic and could vary between a half hour and an hour, along the main A96 road. The property they had been nominated for was a four bed property to accommodate their family. She explained that the Respondents had set up a childminding business after Mr Simpson had hurt his back during his previous employment as a roofer. They looked after ten children from nine families. They would need give five weeks notice to their clients. If they moved again, they would likely have to start that business from scratch.
- 11 Mr Kingdon did not dispute that it was an upsetting situation. As a letting manager he could see the levels of properties in the region quite clearly. The larger properties that did become available would go quickly. He did however point out that Elgin and Huntly were both on the main bus route through Keith. He pointed out the other side to the situation, namely that the Applicant have had to find alternative accommodation in a remote area outside Huntly because their own home was not available. He appreciated that Elgin and other surrounding areas were not ideal for the Respondents, however the Applicants were currently in that same position.

Relevant Legislation

- 12 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 4

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal must may find that the ground named by subparagraph (1) applies if: (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3)References to the landlord in this paragraph—

(a)in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b)in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Findings in Fact and Law

- 13 The parties entered into a Private Residential Tenancy Agreement which commenced on 27th September 2019.
- 14 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 15 On 7 December 2020 the Applicant's Representative delivered a Notice to Leave to the Respondents by email and by second class mail. The Notice to Leave cited ground 4 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 21 March 2021.
- 16 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 17 The Applicants intend to reside in the property for at least three months, having relocated from Dubai and taken up employment in the local area.
- 18 It is reasonable to make the order sought by the Applicants.
- 19 The provisions of ground 4 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 20 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. Whilst the Tribunal noted the Respondents' defence of reasonableness as outlined in the written representations submitted by Moray Citizens Advice Bureau, the Tribunal did not consider that the exercise of its discretion in this regard required the hearing of evidence based on the written representations and the submissions from the parties at the Case Management Discussion. It was clear that the substantive facts of the case were not in dispute.
- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 4 of Schedule 3 of the 2016 Act. The Notice to Leave had been sent electronically to the Respondents on 7 December 2020 and confirmed that the earliest date on which proceedings would be raised would be 21 March 2021. The Tribunal was therefore satisfied that the three month period of notice required under section 54 of the Act had been complied with.
- 22 The Tribunal concluded on the basis of its findings in fact that the Applicants intended to return to reside in the property on a permanent basis. The Tribunal accepted this based on the documentation provided by the Applicants in the form of invoices from removal firms, flight confirmations, proof of local employment and the signed affidavit from Mr Laughton, as well as the evidence of Mr Kingdon at the Case Management Discussion in which he outlined that the children were attending the school in Keith and that the Applicant were renting a property in Huntly due to being unable to access the house in Keith. 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 discretion in this regard.
- 23 The Tribunal had a large amount of sympathy for the situation the Respondents had found themselves in, which was by no means of their own making. The Respondents were clearly settled in Keith with their family and did not want to leave. It was an unfortunate situation for all involved. However the Tribunal could not deny the Applicants the right to regain possession of their home and considered that the ongoing prejudice to the Applicants in having to reside in rented accommodation pending a return to the property in Keith outweighed the prejudice to the Respondents by the making of the order. The Tribunal was however prepared to give the Respondents time to conclude the offer from Hanover Housing Association and relocate to the house they had been nominated for in Elgin. The Tribunal noted correspondence from Moray Council which stated that an offer would be made to the Respondents by mid-June. On that basis the Tribunal determined to

suspend enforcement of the order until 30 June 2021. The Tribunal did note however the ongoing restrictions on enforcing eviction orders in respect of the Moray area, which as at the time of this decision remains in level 3.

- 24 The Tribunal therefore determined to make an eviction order, with enforcement suspended until 30 June 2021.

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.

Ruth O'Hare

18th May 2021

Legal Member/Chair

Date