



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/22/0345

Re: Property at Flat 2, 9 Commerce Street, Elgin, IV30 1BS (“the Property”)

Parties:

Mrs Maureen Valentine, Gushet Neuk, Fochabers, IV32 7QA (“the Applicant”)

Mr Piotr Kubowicz, Flat 2, 9 Commerce Street, Elgin, IV30 1BS (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

1 By application dated 2 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 Tenancy Agreement between the parties;
- (ii) Notice to Leave dated 31 May 2021 stating that proceedings for possession will commence no earlier than 12 December 2021 and citing ground 1 together with confirmation from the Applicant of service by hand delivery;
- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Moray Council and proof of service on the local authority by email;

- (iv) Letter from the Applicant confirming their intention to sell the property to fund her retirement;
 - (v) Email from the Applicant to Grampian Property Centre instructing the marketing of the property
- 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 18 May 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.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 18 May 2022. The Applicant was represented by Mr Neil Williamson. She was not herself present. The Respondent was not present. Having noted that the Respondent had received proper notification of the application together with the date and time of the Case Management Discussion and details for joining the teleconference the Tribunal determined to proceed in his absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. Mr Williamson was then given the opportunity to address the Tribunal on the application.
- 5 Mr Williamson explained that the Applicant wished to sell the property. She was of retirement age and had been retired for a few years. The property was to be sold to raise funds to enable her to retire in comfort. The Tribunal asked about the Respondent's circumstances. Mr Williamson advised that the Respondent had been the sole tenant in the property for the past two years. He had been known to the Applicant as a friend of the previous tenant and she had kept in contact with him throughout the tenancy. He had generally been a good tenant, although had some difficulties during the pandemic when he had periods of unemployment. This led to rent arrears accruing, and the current outstanding balance was £2250. Mr Williamson advised that the Applicant was not seeking to recover these sums.
- 6 Mr Williamson confirmed that they had been in discussion with the Respondent throughout the eviction process and had tried to convince him to attend the Case Management Discussion. He had been reminded of the details and how to join the meeting. The Applicant had been supportive of the Respondent throughout the process. The Respondent did have some difficulties with

language but he understood what was happening in terms of the eviction process. Mr Williamson advised that the Respondent was waiting for the eviction order so that he could be rehomed through the local authority's homelessness team.

- 7 In response to questions from the Tribunal Mr Williamson confirmed that he was not aware of the Respondent suffering from any health issues. If the property was not sold that would impact on the Applicant. She had been using her lump sum pension but those funds were depleting. It had always been her intention to sell the property to raise funds and divert them a more traditional retirement plan. The Tribunal asked questions regarding the service of the Notice to Leave and Mr Williamson confirmed that the Applicant had met with the Respondent to give him the Notice. Discussions with the Respondent since then confirmed that he had received the Notice and was aware of what it meant. The Applicant had been in regular contact with the Respondent since the service of the Notice. Mr Williamson further confirmed that he was not aware of any outstanding housing benefit claims nor any housing benefit having ever been paid to the rent account.

Relevant Legislation

- 8 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

- 9 The parties entered into a Private Residential Tenancy Agreement which commenced on 18 September 2019.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 On 3 June 2021 the Applicant hand delivered a Notice to Leave to the Respondent which cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 12 December 2021.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 The Applicant is the registered owner of the property.
- 14 The Applicant therefore has title to sell the property.
- 15 The Applicant has instructed the sale of the property, including engaging estate agents.
- 16 The Applicant requires to sell the property in order to fund her retirement.
- 17 The Applicant intends to sell the property within three months of the Respondent ceasing to occupy.
- 18 It is reasonable to make the order sought by the Applicant.
- 19 The provisions of ground 1 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. The Tribunal accepted the evidence of Mr Williamson that the Applicant had encouraged the Respondent

to attend the Case Management Discussion and he had received proper service of the application paperwork by Sheriff Officers.

- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave had been hand delivered to the Respondent on 3 June 2021 and confirmed that the earliest date on which proceedings would be raised would be 12 December 2021. The Tribunal was therefore satisfied that the six month period required under section 54 of the Act had been complied with.
- 22 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 her intention was genuine in this regard, based on the steps she had taken to date and the evidence of Mr Williamson which the Tribunal found to be credible. There was nothing put forward by the Respondent to contradict the Applicant's position in this regard. 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.
- 23 The Tribunal took into account the Respondent's personal circumstances, namely that he resided alone, had been in and out of employment and intended on seeking accommodation with the local authority in the event that an eviction order was granted. There were no housing benefit issues as far as the Applicant was aware and the Respondent did not suffer from any health issues. The Tribunal also noted the Applicant's circumstances and the reasons for her intention to sell, which was to fund her retirement through more traditional means. The Tribunal considered that ultimately the balance of reasonableness weighted in favour of the Applicant in that there was nothing in the Respondent's circumstances to justify refusal of the order sought.
- 24 The Tribunal therefore concluded that ground 1 had been met and it was reasonable to grant the order. 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.

Ruth O'Hare

18th May 2022

Legal Member/Chair

Date