



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/22/0563

Re: Property at Carraig Dhubh South, Shore Road, Whiting Bay, Isle of Arran, KA27 8QP (“the Property”)

Parties:

Louise Roberts, Ladywell Cottage, Legerwood Earlston, KA27 8QP (“the Applicant”)

David Antony McLean, Veronika Kuknova, Carraig Dhubh South, Shore Road, Whiting Bay, Isle of Arran, KA27 8QP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

- 1 By application dated 28 February 2022 the Applicant applied to the Tribunal for an order for repossession against the Respondents 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 11th August 2021 stating that proceedings for possession will commence no earlier than 18 February 2022 and citing ground 3 together with confirmation of service by Sheriff Officers;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Council and proof of service on the local authority by email;
 - (iv) Updated refurbishment programme;
 - (v) Energy Performance Certificate for the property; and
 - (vi) Email from the Respondents dated 9 February 2022.
- 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 20 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 Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 20 May 2022. The Applicant was represented by Mr Scott Runciman, Gilson and Gray Solicitors. She was not herself present. The Respondents were not present. Having noted that the Respondents 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 their absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. Mr Runciman was then given the opportunity to address the Tribunal on the application.
- 5 Mr Runciman explained that the Applicant sought the order for eviction. This was one of a number of applications for properties in the Isle of Arran which the Applicant owned and was seeking to refurbish. The Applicant was clear that the works would be sufficiently disruptive to merit repossession and Mr Runciman made reference to the refurbishment schedule which had been produced. The works included removing the sewage system and radiators, replacing single glazed windows and other disruptive works. They were intended to be completed over a period of six to eight weeks. Mr Runciman referred to the Energy Performance Certificate also produced which identified that the property was in need of upgrading. Mr Runciman explained that the Respondents have now removed from the property, and he understood the keys had been returned however there was no clear confirmation of this therefore the order was sought to protect the Applicant's position. Mr Runciman explained that he understood

the Applicant would possibly be looking to sell the property once the refurbishment was complete.

Relevant Legislation

- 6 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 3

(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

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

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so, and

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.

Findings in Fact and Law

- 7 The parties entered into a Private Residential Tenancy Agreement which commenced on or around 1st June 2021.

- 8 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 9 On 17 August 2021 a Notice to Leave to the Respondents which cited ground 3 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 18 February 2022.
- 10 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 11 The Applicant is the registered owner of the property.
- 12 The Applicant intends on refurbishing the property by carrying out significant upgrades to the sewer system, heating and windows.
- 13 It would be impracticable for the Respondents to continue to occupy the property whilst said works are being carried out.
- 14 The Respondents are no longer in occupation of the property.
- 15 It is reasonable to make the order sought by the Applicant.
- 16 The provisions of ground 3 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. The Tribunal accepted that the Respondents had received proper service of the application paperwork by Sheriff Officers and had been given the opportunity to participate in the proceedings.
- 18 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 3 of Schedule 3 of the 2016 Act. The Notice to Leave had been delivered to the Respondents on 17 August 2021 and confirmed that the earliest date on which proceedings would be raised would be 18 February 2022. The Tribunal was therefore satisfied that the six month period required under section 54 of the Act had been complied with.
- 19 The Tribunal was further satisfied on the basis of its findings in fact that the Applicant intended on carrying out refurbishment works that would require the Respondents to remove from the property. The Tribunal accepted that her intention was genuine in this regard, based on evidence produced in the form of the refurbishment programme and the submissions from Mr Runciman at the

Case Management Discussion. There was nothing put forward by the Respondents 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 eviction order. On the basis that the Tribunal accepted the Respondents had vacated the property, the Tribunal concluded it would be reasonable to grant the order.

20 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

20 May 2022

Legal Member/Chair

Date