



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/22/2805

Re: Property at 38 E, Friar Street, Perth, PH2 0ED (“the Property”)

Parties:

Mrs Amanda Fooks, 154B High Street, Newburgh, Fife, KY14 6DZ (“the Applicant”)

Mr Michael Foley, 38E Friar Street, Craigie, Perth, PH2 0ED (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Frances Wood (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 dated 8 August 2022 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 Private Residential Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 27 April 2022, confirming that proceedings would not be raised any earlier than 21 July 2022 and citing ground 1 of schedule 3 of the 2016 Act;
 - (iii) Copy confirmation of service of Notice to Leave on the Respondent by hand delivery on 27 April 2022;
 - (iv) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Perth and Kinross Council together with proof of service by email;

- (v) Email from the Applicant to the Applicant's representative confirming intention to sell;
 - (vi) Copy letter from Kippen and Campbell Solicitors confirming property will be marketed and they had been instructed in the sale once vacant possession obtained; and
 - (vii) Email from Possible Estate Agents confirming they had been instructed to market the property.
- 2 The Tribunal was also provided with the title sheet for the property together with the Applicant's divorce decree and birth certificate which confirmed the Applicant to be the registered owner.
 - 3 By Notice of Acceptance of Application dated 17 October 2022 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 13th January 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 13 January 2023. The Applicant was present and represented by Mrs Hallgarth-Myles. The Respondent was not in attendance.
- 6 The Legal Member 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. She asked Mrs Hallgarth-Myles to address the Tribunal on the application.
- 7 Mrs Hallgarth-Myles advised that the Applicant was looking to recover the property in order to sell. She was currently undergoing cancer treatment and wished to settle her estate and "tie up loose ends" due to her declining health. She had previously let two properties and had already sold one, the Respondent was occupying the other. At the commencement of the tenancy the Respondent was coping well. However latterly he had been receiving support from Perth and Kinross Council. A housing support worker had been visiting him regularly, assisting him with completing forms, referrals and offering assistance. Mrs Hallgarth-Myles confirmed that the Notice to leave had been served by a member of her team, on a joint visit with the housing support worker in order to make sure the Respondent was aware of what was being served and what he required to do. The Respondent had received the Notice to Leave in person.

- 8 Mrs Hallgarth-Myles confirmed that the Council had acknowledged the Tribunal proceedings and had confirmed that the Respondent was on the homelessness list. They were trying to source accommodation for him. The Respondent was around 43 years old and had no dependents. He was the sole occupant of the property. Mrs Hallgarth-Myles confirmed that she had spoken with the Respondent's housing support worker that morning who had arranged to visit him and support him with the Case Management Discussion. However he had subsequently emailed to cancel the appointment. Mrs Hallgarth-Myles confirmed her understanding that the Council would rehouse the Respondent in the event of an order being granted and were seeking actively to do so.

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 dated 17 December 2020 which commenced on 18 December 2020.
- 11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 12 On 27 April 2022 the Applicant's representative, accompanied by the Respondent's housing support worker, hand delivered a Notice to Leave to the Respondent.
- 13 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 21 July 2022.
- 14 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 15 The Applicant is the registered owner of the property.
- 16 The Applicant therefore has title to sell the property.
- 17 The Applicant has instructed the sale of the property, including engaging estate agents and solicitors.
- 18 The Applicant requires to sell the property due to her declining health.
- 19 The Respondent has a housing support worker who is assisting him with sourcing alternative accommodation.
- 20 The Applicant intends to market the property for sale within three months of the Respondent ceasing to occupy.
- 21 It is reasonable to make the order sought by the Applicant.
- 22 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 23 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 had been given the opportunity to attend but had chosen not to do so.

- 24 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.
- 25 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 submissions from Mrs Hallgarth-Myles at the Case Management Discussion and the steps the Applicant had taken to date in order to progress a sale. 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.
- 26 The Tribunal accepted the Applicant's reason for selling the property, namely that her health was declining and she wished to ensure her estate was in order. Whilst the Tribunal had concerns regarding the Respondent's vulnerability, it had cognisance of the fact that he had the benefit of a housing support worker who was actively supporting him in sourcing alternative accommodation. He had been served with the Notice to Leave personally and, whilst he had chosen not to attend the Case Management Discussion, the Tribunal was satisfied that he would have been advised of the proceedings and the possible outcome. 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.
- 27 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.
- 28 Finally, as an observation the Tribunal would encourage the Applicant or her representative to continue to engage with the Respondent's housing support worker in order to ensure suitable alternative accommodation can be found for him in early course. This should include alerting the housing support worker to the granting of the order at the earliest opportunity.

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.

13 January 2023

Legal Member/Chair

Date