



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/21/0508

Re: Property at 27 Mayfield Crescent, Stevenston, KA20 4AJ (“the Property”)

Parties:

Mr Scott Bradley, 2 Annanhill Place, Kilwinning, KA13 6TW (“the Applicant”)

Miss Darryl Reilly, 27 Mayfield Crescent, Stevenston, KA20 4AJ (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Janine Green (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 4 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) Copy Private Residential Tenancy Agreement between the parties dated 13 March 2020;
 - (ii) Notice to Leave dated stating that proceedings for possession will commence no earlier than 26 February 2021 and citing ground 1, together with proof of postage;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Ayrshire Council;
 - (iv) Copy Single Survey Report in respect of the property dated 9th October 2019;
- 2 The Tribunal was also in receipt of the Land Certificate for the property under Title Number AYR69000 which confirmed the registered owner as Scott Bradley.
 - 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 17 June 2021, 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 on 12 May 2021.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 17 June 2021. The Applicant was represented by Ms Amy Rose Farrell of Glow Homes Letting and Sales Ltd. The Respondent was not present. It was noted that service of the application paperwork had been effected upon the Respondent by Sheriff Officers therefore the Tribunal determined to proceed in her absence.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. She then asked Ms Farrell to address the Tribunal on the application.
- 6 Ms Farrell explained that the Applicant sought an eviction order and clarified that he was intending on selling the property, not returning to live in it. He had fallen into financial hardship after his partner had lost her job and the property they were residing in required to be sold. The Applicant and his partner were currently in rental accommodation and were incurring costs as a result. They were looking to sell the property at Mayfield Crescent in order to buy a property of their own. The Respondent had been made aware of this, and of the Applicant's situation. Ms Farrell had expected the Respondent to attend the Case Management Discussion, as she was well aware of the situation. However Ms Farrell pointed out that the Respondent was keen to move out of the property and be rehoused by the local authority. The local authority had indicated that they would not rehouse the Respondent until such time as an eviction order was granted against her.

- 7 The Tribunal asked Ms Farrell about the circumstances around the landlord's intention to sell, assuming the eviction order was made, and in particular the timescales he was working to. Ms Farrell advised that he intended to put the property on the market as soon as possible. Some repair and maintenance was required before the property could be put up for sale however the market was moving fast and the Applicant wanted to take advantage of that. Ms Farrell advised that there had been some issues in gaining access to the property recently and as a result they had not been able to carry out any work as yet.
- 8 The Tribunal noted the Single Survey report produced by the Applicant dated back to 2019. Ms Farrell explained that the Applicant had looked to sell the property when he moved in with his partner but had subsequently changed his mind. His circumstances had now changed in that his partner had lost her job and had to sell her house. The Applicant and his partner now required to sell the property at Mayfield Crescent so that they could purchase a property together. Ms Farrell reiterated that it was not the Applicant's intention to move into the property. An updated report would be obtained once access could be gained to the property.

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 which commenced on 13 March 2020.
- 11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 12 On 26 August 2020 the Applicant's Representative delivered a Notice to Leave to the Respondent by recorded delivery mail. The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 February 2021.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 The Applicant is the registered owner of the property.
- 15 The Applicant therefore has title to sell the property.
- 16 The Applicant requires to sell the property in order to purchase a home with his partner.
- 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.
- 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 sent to the Respondents on 26 August 2020 and confirmed that the earliest date on which proceedings would be raised would be 26 February 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 his intention was genuine in this regard, based on the submissions made by Ms Farrell 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.
- 23 The Tribunal considered the fact that the Respondent had been given notice of the Applicant's intention to sell the property in August 2020 thereby giving her ample opportunity to obtain alternative accommodation. The Tribunal also took cognisance of the fact that she was actively seeking accommodation from the local authority, and the granting of the order would assist in that process. The Respondent had received service of the application paperwork, had engaged in discussions with the Applicant's agent regarding the matter, and had been given the opportunity to enter the proceedings but had chosen not to do so. It could therefore be reasonably assumed that she had no intention of challenging the application, likely on the basis that she was intent on obtaining local authority accommodation. The Tribunal therefore considered that the ongoing prejudice to the Applicant in his inability to sell the property in order to purchase a new home outweighed any prejudice to the Respondents by the making of the order.
- 24 The Tribunal therefore determined it would be reasonable to issue an eviction order in all the circumstances of the case and concluded that ground 1 had been met.

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

17th June 2021

Legal Member/Chair

Date