



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/23/0318

Re: Property at 7 Benvane Road, Glenrothes, Fife, KY6 3HJ (“the Property”)

Parties:

Mr Shaun Kerr, Mrs Lynne Kerr, 12 Beechwood Place, Glenrothes, Fife, KY7 6GF (“the Applicant”)

Mr Garry Eggo, 7 Benvane Road, Glenrothes, Fife, KY6 3HJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Linda Reid (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 31 January 2023 the Applicant sought an eviction order against the Respondent. In support of the application the Applicant submitted the following:-
 - (i) Copy Private Residential Tenancy Agreement between the parties dated 30 September 2022;
 - (ii) Notice to Leave confirming that proceedings would not be raised any earlier than 13 January 2023 and confirmation of service by hand delivery on 13 December 2022; and
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to the local authority together with proof of service.
- 2 The Tribunal was also in receipt of the title sheet for the property which confirmed the Applicant to be the registered owner.

- 3 By Notice of Acceptance of Application 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 17th May 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.
- 5 The Applicant subsequently submitted an affidavit from himself and a request to amend the application to include ground 4A of Schedule 3 of the 2016 Act.

Case Management Discussion

- 6 The Case Management Discussion took place on 17 May 2023. The Applicant was present. The Respondent was also present.
- 7 As a preliminary point the Tribunal noted that the Applicant was seeking to amend the application to include ground 4A. Mr Eggo also indicated at the start of the Case Management Discussion that he was not objecting to anything Mr Kerr had put forward. He was happy to give the house back. He just wanted a date for removing and if this could be towards the end of June to allow him time to move into a new property that he had been allocated by a housing association. He advised that Mr Kerr had been more than accommodating with his situation.
- 8 The Tribunal then heard from Mr Kerr. He made reference to the affidavit that had been lodged which outlined the reasons for seeking to include ground 4A. The intention had always been for himself and his wife to move into the property as a retirement home. However when it was purchased they weren't ready to move in as their children were still at home. Their children were now grown and getting ready to move on. Mr Kerr had taken the decision to rent the property on a short term basis until such time as he and his wife were ready to move. There had been huge interest and after doing their due diligence the property had been let to Mr Eggo.
- 9 Mr Kerr advised that from the first month of the tenancy there were issues with rent for reasons unknown to Mr Kerr. He had maintained a good relationship with Mr Eggo throughout however the arrears continued to increase. It was very frustrating and had a financial impact. Mr Eggo repeatedly made offers of payment that were not honoured. Mr Kerr continued to suffer financially as bills increased due to the cost of living crisis and his business took a bit of a downturn. The original plan had been for his son to move into the property pending a purchase of his own home, hence why the Notice to Leave was served under ground 5. However that didn't fit the new legislation. Accordingly Mr and Mrs Kerr had taken the decision that their son would move into their current home and they would move into the property Mr Eggo was occupying. That would help both Mr Kerr and his son financially. The property was smaller

and would mean lower costs for Mr Kerr and his wife. It would require some adaptation. Mr Kerr stressed that it was always his and his wife's intention to move into the property. It would fit their needs better as they entered retirement. It was smaller, more manageable and would be affordable as he and his wife faced a drop in their income.

- 10 Mr Eggo advised he had nothing further to add. He had been offered another home, which was a brand new build, and he was waiting for solicitors to sort out the handover paperwork. He expected to get official notice of his move in date later this week or early next week. He had an arrangement to pay the arrears back. He again asked for an extension to the end of June if possible.

Relevant Legislation

- 11 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 4A

It is an eviction ground that the landlord intends to live in the let property to alleviate financial hardship.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if—

(a) the landlord—

(i) is suffering financial hardship, and

(ii) intends to alleviate that hardship by occupying 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.

(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)(a)(ii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) an affidavit stating that the landlord has that intention.

Findings in Fact and Law

- 12 The parties entered into a Private Residential Tenancy Agreement dated 30 September 2022.
- 13 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 13 December 2022 the Applicant hand delivered a Notice to Leave to the Respondent.
- 15 The Notice to Leave cited ground 5 and confirmed that proceedings would not be raised any earlier than 13 January 2023.
- 16 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 17 The Applicant is the registered owner of the property.
- 18 The Applicant is suffering financial hardship and intends to return to live in the property in order to alleviate said financial hardship. The Applicant's son will move into the Applicant's current property.
- 19 The Applicant intends to occupy the property on a permanent basis as part of retirement planning.
- 20 The Respondent has secured alternative accommodation with a housing association. The Respondent expects to be in a position to move by the end of June.

- 21 The Respondent does not oppose the application.
- 22 It is reasonable to make the order sought by the Applicant.
- 23 The provisions of ground 4A of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 24 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 on the basis that the Respondent did not dispute the position put forward by the Applicant.
- 25 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 5 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. The Tribunal was further satisfied that it could allow an amendment to the application to introduce ground 4A, noting this was not opposed by the Respondent, as this had been intimated timeously on the Tribunal and the Respondent.
- 26 The Tribunal then considered whether ground 4A had been met. The Tribunal was satisfied, based on the affidavits produced and the verbal submissions at the Case Management Discussion, that the Applicant was suffering financial hardship in terms of the Respondent's persistent failure to pay the rent for the property and the resulting consequences on his other costs.
- 27 The Tribunal then considered the question of reasonableness. The Respondent had obtained alternative accommodation with a housing association. He intimated that he was content to hand the property back to the Applicant. The Tribunal was satisfied that the Applicant's intentions were genuine, and his reasons for moving in the property were credible in terms of his plans for retirement. Accordingly having taking into account the particular facts and circumstances of this case the Tribunal concluded that it would be reasonable to make an eviction order. However the Tribunal determined to extend enforcement of the order until the 30th June 2023 to allow the Respondent sufficient time to remove from the property on the basis that this would only delay enforcement by around two weeks and it would be reasonable to make that allowance for the Respondent.

28 The Tribunal therefore determined to make an eviction 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.



17 May 2023

Legal Member/Chair

Date