



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/23/2701

Re: Property at 62 George Court, Hamilton, ML3 9HG (“the Property”)

Parties:

Mrs Janice Murphy, 3 Chateau Grove, Hamilton, ML3 7DS (“the Applicant”)

Mr Piotr Antonuik, 62 George Court, Hamilton, ML3 9HG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (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 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 5 January 2023, confirming that proceedings would not be raised any earlier than 2 April 2023 and proof of service on the Respondent by email;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to South Lanarkshire Council;
 - (iv) Copy letter from John Y Robertson Solicitors and Estate Agents confirming Applicant’s intention to sell; and
 - (v) Title Sheet LAN214066.

- 2 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 and 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

- 3 The Applicant was represented at the Case Management Discussion by Mr John MacDonald, Solicitor. She was not herself in attendance. The Respondent was represented by Mr Jordan Bird. He was not himself in attendance.
- 4 The Tribunal 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. The Tribunal asked the parties to address the Tribunal on the application.
- 5 Mr Macdonald advised that the Applicant and her husband had a portfolio of properties that they were in the process of selling once vacant possession was obtained. Mr MacDonald advised that his firm had so far acted in the sale of at least three properties, and he had obtained two eviction orders for two of those on the same ground as the present application. There were a further three applications pending before the Tribunal on that basis. The Applicant and her husband were in their sixties and had been in the domestic rental business for some time. However they had not purchased any properties since the coronavirus pandemic, they had been in the process of selling. The Applicant and her husband had no other income other than from their rental properties and were looking to fund their retirement from the sale proceeds of their property portfolio. Mr Macdonald explained that the Applicant had not yet formally instructed estate agents to sell the property, as she was awaiting the outcome of the application. In response to questions from the Tribunal he confirmed that there was no mortgage on the property. He explained that some of the other tenants were in rent arrears but there were no such issues with the Respondent.
- 6 Mr Bird confirmed that he had only recently been instructed by the Respondent in advance of the Case Management Discussion but had permission to speak on his behalf. The Respondent had no opposition to the making of an eviction order but wished to clarify certain information. Mr Bird noted that the Tribunal had to be satisfied that there were genuine grounds for the property to be sold, and that the Applicant had other properties in her portfolio. The Respondent resided in the property with a young child aged 21 months and may face challenges in obtaining alternative accommodation given the time of year. Accordingly Mr Bird requested that the enforcement of the order be suspended for a period of time to allow the Respondent time to obtain a new property.

Relevant Legislation

- 7 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.

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received after 28 October 2022.

Findings in Fact and Law

8 The parties entered into a Tenancy Agreement in respect of the property.

9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 10 On 5 January 2023 the Applicant's representative emailed a Notice to Leave to the Respondent.
- 11 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 2 April 2023.
- 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 has title to sell the property.
- 14 The Applicant has a number of domestic rental properties. The Applicant has sold three properties to date and is in the process of selling the remainder of the property portfolio.
- 15 The Applicant requires to sell the property to fund retirement and is in the process of withdrawing from the domestic rental business.
- 16 The Respondent does not oppose the making of an eviction order. The Respondent intends on obtaining alternative accommodation.
- 17 The Applicant intends to market the property for sale 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

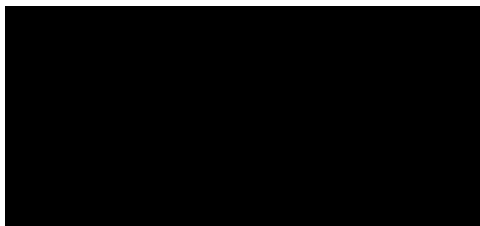
- 20 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. It was clear that there were no matters in dispute that would require a hearing to be fixed. The Respondent did not dispute the terms of the application.
- 21 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.
- 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 application paperwork and the submissions from Mr Macdonald 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 in this regard.

- 23 The Tribunal accepted the Applicant's reason for selling the property, namely that she was in the process of withdrawing from the domestic rental business and required the sale proceeds to fund her retirement. The Tribunal also had regard to the fact that the Respondent did not dispute the making of an eviction order and was intent on seeking alternative accommodation. The Tribunal was also aware that the Cost of Living (Tenant Protection) (Scotland) Act 2022 applied to the application before it, which would delay the enforcement of any eviction order for a period of six months from the date the order was granted, or the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, whichever was the earlier. On that basis the Tribunal did not see any requirement to suspend the enforcement of the order as the Respondent would have an extended period of time to obtain accommodation. 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.
- 24 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.



10/11/20223

Legal Member/Chair

Date

