



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/24/3558

Re: Property at 43 Hadrian Way, Bo'ness, EH51 9QL (“the Property”)

Parties:

Mrs Susan Anderson, Mr Clifton Anderson, 37 Hillview Terrace, Edinburgh, EH12 8RG (“the Applicant”)

Ms Diana Nelson, 43 Hadrian Way, Bo'ness, EH51 9QL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution of the order suspended until 30 June 2025

Background

- 1** The Applicants applied to the Tribunal for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants relied upon ground 1 of schedule 3 of the 2016 Act, stating that the Applicants intended on selling the property.
- 2** By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion (“CMD”) was scheduled to take place by teleconference on 28 February 2025. The Tribunal gave both parties notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 3 February 2025.

- 3 On 13 February 2025 the Tribunal received written representations from the Respondent. In summary the Respondent explained that she did not oppose the eviction order. She was seeking accommodation with the local authority for herself and her disabled daughter. The Respondent confirmed that she would attend the CMD.

The CMD

- 4 The CMD took place on 28 February 2025 by teleconference. Mrs Anderson appeared on behalf of both Applicants. The Respondent was in attendance.

- 5 The Tribunal had the following documents before it:-

- (i) Form E application form dated 5 August 2024;
- (ii) Title sheet WLN12974;
- (iii) Private residential tenancy agreement between the parties dated 1 April 2023;
- (iv) Signed termination of tenancy dated 12 and 23 March 2023;
- (v) Section 11 notice to Falkirk Council together with proof of delivery by email;
- (vi) Notice to leave dated 5 May 2024 together with proof of delivery by email to the Respondent; and
- (vii) Copy letter from Sneddons Solicitors and Estate Agents dated 1 August 2024.

- 6 The Tribunal explained the purpose of the CMD and the legal test under ground 1 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from the parties. For the avoidance of doubt the following is a summary of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.

- 7 Mrs Anderson explained that she and the Respondent had a good relationship. The Applicants wanted to sell the property as it had been purchased 20 years ago as an investment for their retirement. The Applicants had consulted an estate agent at the beginning of last year and had subsequently given the Respondent notice to leave. Mrs Anderson explained that the mortgage costs had increased and the Applicants were no longer making any profit on the property. They were having to use their pension funds at times to pay for maintenance and repairs. The mortgage was an interest only product which was due to expire in March 2026. Mrs Anderson confirmed that she and her husband were due to leave for an extended holiday and would not return until July 2025. They would not be taking any steps to sell the property until their return. Mrs Anderson therefore had no objection to the enforcement of any eviction order being delayed to give the Respondent further time to find a property.

- 8 The Respondent echoed Mrs Anderson's comments regarding their relationship. She accepted that the Applicants were retiring and required to sell the property. She did not oppose the eviction order. It was kind of the Applicants to give her additional time, as she was getting married in May and

did not want to stress of that alongside having to find another property. She wished to be rehoused by the local authority but had been told that they could not do anything until the Tribunal made an eviction order. The Respondent explained that both parties were on the same page. It was time to move on. The Respondent confirmed that she resided in the property with her partner, a daughter aged 19 and a daughter aged 15 who was disabled.

- 9 Both parties confirmed that they would have no objection to the making of an eviction order with execution suspended until 30 June 2025.
- 10 Having heard from the parties the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

- 11 The Tribunal considered the following provisions of the 2016 Act:-

Private Housing (Tenancies) (Scotland) Act 2016

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

- 12** The Applicants and the Respondent entered into an assured tenancy agreement dated 20 April 2017.
- 13** The Applicants and Respondent subsequently entered into a private residential tenancy agreement dated 1 April 2023.
- 14** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 15** On 5 May 2024 the Applicants sent a notice to leave to the Respondent by email.
- 16** The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 17** The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 31 July 2024.
- 18** On 1 August 2024 the Applicants emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Falkirk Council.
- 19** The Applicants are the registered owners of the property.
- 20** The Applicants purchased the property as an investment. The Applicants now require to sell the property in order to fund their retirement.
- 21** The Applicants' mortgage costs have increased. The Applicants no longer make any profit from the property. The Applicants require to use their pension funds on occasion to pay for maintenance and repairs.
- 22** The Applicants will shortly be travelling overseas for an extended holiday. The Applicants will not return until July 2025, at which point they intend to market the property for sale.
- 23** The Applicants have an interest only mortgage over the property. The mortgage term is due to expire in March 2026.
- 24** The Respondent resides in the property with her partner and two daughters aged 19 and 15. The Respondent's youngest daughter is disabled.
- 25** The Respondent does not object to the making of an eviction order. The Respondent wishes to seek accommodation with the local authority. The making of an eviction order will assist the Respondent in progressing her application for council housing.

Reasons for Decision

- 26** The Tribunal took into account the application paperwork and the submissions at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules, and make relevant findings in fact based on the information provided by the Applicants and the Respondent. It was clear that parties were broadly in agreement as to the substantive facts of this case and there were therefore no issues to be resolved that would require a hearing to be fixed.
- 27** Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 1 had been met in this case.
- 28** The Tribunal accepted that the Applicants were entitled to sell the property as the registered owners under title sheet WLN12974. The Tribunal also accepted that the Applicants intended on marketing the property for sale upon their return from holiday in July. The Tribunal found the Applicant's reasons for selling the property as outlined to be credible and therefore accepted that their intention was genuine in this case.
- 29** The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 30** The Tribunal gave significant weight to the Applicants' property rights, which entitled them to dispose of the property, and their reasons for doing so, namely to follow through with their intention of using the sale proceeds to fund their retirement. The Tribunal also gave weight to the fact that they were facing increased mortgage costs, which meant they were no longer making any profit on their investment.
- 31** The Tribunal carefully considered the Respondent's circumstances. Whilst the Tribunal had concerns about the impact of eviction on the Respondent's household, particularly her youngest daughter, ultimately the Tribunal gave the most weight to the fact that the Respondent had no objection to the making of an eviction order. It would assist her in obtaining accommodation with the local authority, and as stated at the CMD she wished to move on. The Tribunal also took into account the fact that both parties were content with enforcement of the order being suspended until 30 June 2025.
- 32** The Tribunal therefore concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met if execution of the order is suspended until 30 June 2025.
- 33** 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

28 February 2025

Legal Member/Chair

Date