



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/22/0261

Re: Property at 28 Witchwood Crescent, Peebles, EH45 9AH (“the Property”)

Parties:

Mrs Christine Edge, Lower Melrose, Old Church Road, Peebles, Peeblesshire, EH45 8LH (“the Applicant”)

Mr Liam Whitson, Miss Samantha Boswell, 28 Witchwood Crescent, Peebles, EH45 9AH (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Eileen Shand (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 19th January 2022 the Applicant sought an eviction order against the Respondents 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 6th July 2021, confirming that proceedings would not be raised any earlier than 7th January 2022 and citing ground 1 of schedule 3 of the 2016 Act;
 - (iii) Copy email confirmation of service of Notice to Leave on the Respondents;
 - (iv) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Scottish Borders Council together with proof of service by email dated 19 January 2022; and

- (v) Email from JBM Estate Agents confirming their engagement in respect of the sale of the property.
- 2 The Tribunal was also provided with the title sheet for the property which confirmed the Applicant to be the registered owner.
- 3 By Notice of Acceptance of Application dated 14 March 2022 the Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. It was however noted that the original Notice to Leave which was sent to both Respondents was subsequently amended following an error identified by the first named Respondent. The corrected Notice to Leave was sent to the first named Respondent timeously but was not sent to the second named Respondent until March 2022. The Applicant was advised that this issue would require to be addressed at the Case Management Discussion, specifically whether the second named Respondent had received proper notice.
- 4 A Case Management Discussion was assigned for 8 August 2022. 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 Respondents by Sheriff Officers.

Case Management Discussion

- 5 The Case Management Discussion took place on 8 August 2022. The Applicant was present and represented by Mr Michael Gallagher of Haystoun Financial and Property Services. Both Respondents were 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. The Legal Member noted the issue identified with the Notice to Leave and asked if parties could also address the Tribunal on that particular matter.
- 7 Mr Gallagher explained that the Applicant was seeking vacant possession of the property. He confirmed that the original Notice to Leave had a slight error in the date and had been corrected. However it had subsequently been issued to the first named Respondent, and not the second named Respondent. Mr Gallagher advised that the Applicant had instructed an estate agent, but had not been able to progress the sale of the property as the agent required access in the first instance in order to issue terms of business. The property had been bought in 2018 as an investment and had been let out since that date. However the Applicant's daughter now lived in New Zealand and she wished to sell the property to release funds to enable her to travel there and spend time with her family. Mr Gallagher confirmed that there was a mortgage over the property and it was the only property let by the Applicant.

- 8 The Tribunal then heard from the Respondents. Both advised that they were not opposing the application. The only reason they had not yet vacated was because the Council required the order from the Tribunal so that they could provide the Respondents with accommodation. The second named Respondent advised that she was aware of the corrected Notice to Leave that had been issued to the first named Respondent. She had been there when the email was received and had sight of it. There had been no problem there. In response to questions from the Tribunal the Respondents confirmed that the property was not adapted in any way and they resided there with their three children aged 4, 5 and 17.

Relevant Legislation

- 1 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

- 2 The parties entered into a Private Residential Tenancy Agreement which commenced on 1 April 2018.
- 3 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 4 On 6 July 2021 the Applicant's representative emailed a Notice to Leave to both Respondents which contained an error in the effective date. The Notice to Leave was subsequently re-issued to the first named Respondent's email address only.
- 5 The amended Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 7 January 2022.
- 6 The second named Respondent was with the first named Respondent when he received the amended Notice to Leave.
- 7 The second named Respondent was aware of the amended Notice to Leave and the effective date of the Notice.
- 8 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 9 The Applicant is the registered owner of the property.
- 10 The Applicant therefore has title to sell the property.
- 11 The Applicant has instructed the sale of the property, including engaging estate agents.
- 12 The Applicant requires to sell the property in order to release funds to spend more time with her family.
- 13 The property is subject to a mortgage.
- 14 The Applicant intends to market the property for sale within three months of the Respondents ceasing to occupy.
- 15 The Respondents have sought accommodation with the local authority.
- 16 It is reasonable to make the order sought by the Applicant.
- 17 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 18 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. Both parties were in agreement as to the substantive facts of the case.
- 19 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. It was noted that the amended Notice to Leave had been sent to the first named Respondent only, therefore the Notice to Leave sent to the second named Respondent contained an error in the effective date. The second named Respondent had however been aware of the amended Notice, having been present when it was received by the first named Respondent. She did not dispute having had sight of it. She had therefore been aware of the correct effective date. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act on the basis that it would be reasonable to do so.
- 20 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 Mr Gallagher at the Case Management Discussion and the steps the Applicant had taken to date in order to progress a sale. The Respondents did not dispute the position put forward by the Applicant. 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.
- 21 The Tribunal took into account the submissions from the Respondents, namely that they did not oppose the application and had sought accommodation with the local authority. The granting of the order would assist with that process. Whilst the Tribunal noted the presence of three children in the property, it took into account the fact that the Notice to Leave had been sent to the Respondents in July 2021, more than a year prior to the Case Management Discussion. The Respondents appeared to have no difficulty with the Applicant's reasons for requiring possession of the property. The Tribunal also noted the Applicant's circumstances and the reasons for her intention to sell, which was to fund her trips to New Zealand to spend more time with her family. The Tribunal therefore considered that ultimately the balance of reasonableness weighted in favour of the Applicant.

22 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.

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

9 August 2022

Legal Member/Chair

Date