



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/22/2149

Re: Property at 62 Keir Hardie Road, Larkhall, South Lanarkshire, ML9 2ND (“the Property”)

Parties:

David Robb, Claire Robb, 38 Station Road, Carluke, ML8 5AD (“the Applicant”)

Miss Tanith Gardener, 62 Keir Hardie Road, Larkhall, South Lanarkshire, ML8 5AD (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.

A: Background

This is an application for eviction order lodged with the Tribunal on 4.7.22 in terms of S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and Rule 109 of the Procedure Rules.

The Applicant had lodged the following documents in evidence:

- a) Private Residential Tenancy Agreement (PRT) for the property commencing 28.11.18
- b) rent statement 28.10.2018-28.5.2022
- c) notice to leave dated 28.11.21 with rent statement 31.10.18-28.10.21
- d) email sending same dated 28.10.21
- e) S 11 notice and email sending same to South Lanarkshire Council on 4.7.22

- f) PARs letter to Respondent from Anna Wood Let Alliance dated 21.4.22 with cover email
- g) updated rent statement to 28.8.22
- h) Email chain between Respondent and Let Link regarding rent arrears
- i) Letter from South Lanarkshire Council to Let Link dated 2.11.21
- j) Agreement to Defer Rental Payments dated 8.10.20 and subsequent letters by Let Link to Respondent.

The following documents were received from the Respondent:

- a) representations dated 14.9.22
- b) Letter from Respondent's representative dated 6.10.22
- c) Medical report for Respondent from Dr Tolman dated 25.11.22
- d) Medical report for Respondent's son from Dr Tolman dated 25.11.22

The application was accepted on 27 July 22 and a Case Management Discussion (CMD) was scheduled for 7.10.22. The Respondent was notified of the application and the CMD date and manner of joining through service by Sheriff Officers.

At the CMD the Applicants were represented by Ms Wooley of Bannatyne Kirkwood France & Co. The Respondent was represented by Ms McLanders from Shelter. A further CMD was scheduled for 1.12.22 to allow the Respondent to produce further documents. Directions were issued to both parties.

Both parties were notified of the new CMD date. The Applicant's representative submitted the documents stated in the Direction by 2.11.22. On 28.11.22 the Respondent's representative submitted the medical reports for the Respondent and her son but no further documentation.

The documents and the Tribunal's CMD note and Directions of 7.10.22 are referred to for their terms and held to be incorporated herein.

At the CMD the Applicants were represented by Ms Wooley of Bannatyne Kirkwood France & Co. The Respondent was represented by Ms McLanders from Shelter.

B: The Case Management Discussion

The legal member explained the purpose of the CMD and the format this was to take.

Ms Wooley advised that the current arrears have now increased to £2,380.00 following a further payment of £364.60 on 14.11.22 and a further rent payment of £395 falling due on 28.11.22.

On behalf of the Respondent Ms McLanders advised that the rent arrears are not in dispute. There was no opposition to the amendment of the amount to the up to date figure. There was no defence to the payment action. No payments had been made by the Respondent. She had some issues with Child Tax Credit as this had to be recalculated following the birth of her youngest child but she is still receiving Employment Support Payments. Her mother had recently been in hospital causing her additional expenses. She had been referred to a Money and Debt Advisor on

28.9.22 but initially had not engaged. She has now been referred again and had a telephone consultation with the CAB on 9.11.22. There was no current proposal for payment.

Both representatives agreed that there were no disputed facts in this case and that thus there was no requirement for an evidential hearing. Both were content to make their submissions on the issue of reasonableness of an eviction order being granted, as this was the only matter on which the application was opposed.

Ms Wooley referred the Tribunal to the payment history, pointed out the level of arrears, the length of time these had been present and the patient and consistent attempts of the Applicants and their agents to get the Respondent to address this problem. She advised of the failure of the Respondent to adhere to a payment plan in the past and the concerns of the Respondents, who only own their own and this property, that as soon as there is no ongoing eviction action any current, if sparse, engagement of the Respondent in addressing her situation would again stop. She pointed out the lack of meaningful engagement with Money and Debt Advice by the Respondent initially after the last CMD and the mandate for the GP reports not being returned initially by the Respondent to her agent as further indications of the Respondent's failure to remedy her own situation. She stated that it would in the long run probably be better for the Respondent's mental health if arrears stopped accruing and if she lived in a property more suitable to her financial situation. She pointed out the statutory duty of the local authority to house the Respondent and her family. The Applicants had been reasonable and patient and would still not oppose a delay in execution of any eviction order to allow further time for the Respondent to find suitable alternative accommodation but overall the situation was not financially viable for the Applicants.

Ms McLanders argued that evicting the Respondent and her young family would not be reasonable. The GP report confirms that the Respondent has a diagnosis of Anxiety and Depression. The Respondent, although initially not engaging, now had undertaken to make use of the Money and Debt Advice service and would be able to produce an income and expenditure calculation and enter into a payment plan. She had admittedly mis-prioritised other debts, such as payday loans and not paid anything towards her arrears to date. Her Child Tax Credit issues had now been resolved and thus there would be some income she could put towards a payment arrangement. It had been a difficult time for the Respondent with her new baby and these proceedings going on and if an order was granted this would be to the detriment of the Respondent's mental health, especially since she would end up initially in temporary accommodation. The GP report had made reference to this. The son would have to go to a different school. If an order was to be granted she asked for the enforcement to be delayed under rule 16A of the Rules of Procedure so the Respondent could make an application. The Respondent had only made a general housing application some time ago but had not made an application in relation to becoming homeless. Ms McLanders clarified when asked by the Tribunal that the GP report only states the GP "would imagine that being made homeless would have a detrimental effect on her mental health" without specifying this further and that the report specifically mentions that the GP had not seen the Respondent in relation to her mental health for a long time and was not able to comment on various matters because of this.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The parties were landlord and tenant of a Private Residential Tenancy over the property which commenced on 28.11.18 and is currently ongoing.
2. The monthly rent for the property was £395 per calendar month in advance (clause 8) payable on the 28th day of each month.
3. A Notice to Leave relying on ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 was served on the Respondent by the Applicants on 28.10.2021 stating as the first date proceedings could be raised as 1 .5. 22.
4. As at 1.12.22 the arrears of rent are £2,380.00.
5. The last direct payment from the Respondent to the Applicants was made on 22.7.21.
6. The Respondent has not adhered to a previous payment plan entered into in October 2020.
7. The Respondent lives at the property with her three children. These are aged 7 years, 2 years and 6 months.
8. The 7 year old boy has a club foot, which has been operated in August 22 and no other health issues. He attends the nearby Primary School
9. The Respondent has a diagnosis of Anxiety and Depression and receives medication for this since 2017.
10. She has not seen her GP regarding her mental health for a long period.
11. She had been referred to the community mental health team but was discharged in June 2021 because she only attended one appointment.
12. The Applicants and their letting agents Let Links had regularly contacted the Respondent over more than 2 years and offered assistance, signposted her to various support organisations, offered to enter into payment plans.
13. A payment plan was agreed, which the Respondent then did not honour.
14. The Respondent did initially not engage with Money and Debt advice after a referral from her solicitor.
15. The Respondent did not return the mandate for the GP reports until after the deadline for the production of such documents in the Direction issued by the Tribunal had passed and the reports were therefore not provided until 28.11.22.
16. The level of rent arrears has now reached the amount of 6 x the monthly rent charge of £395.
17. Rent arrears have been in place consistently since 28.9.2019.

D: Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

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 or must 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.

Grounds under Schedule 3 of the 2016 Act

Ground 12 Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

...

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b)that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B)Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

(4)In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

(i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii)a payment on account awarded under regulation 91 of those Regulations,

(iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6)In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7)Regulations under sub-paragraph (6) may in particular make provision about—

(a)information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b)steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c)such other matters as the Scottish Ministers consider appropriate.

2. Both parties confirmed that the facts of the case are not in dispute. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. Both parties had been given the opportunity to address the Tribunal on the issue of reasonableness and had been given the opportunity to comment fully on each others' submissions.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. In terms of S 54 of the Act a 6 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since 28.9.19. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with the pre action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending the emails of

21.4.22 and Let Link having corresponded consistently and regularly with the Respondent since December 2020 regarding the rent arrears. The Applicant's had entered into an agreement with the Respondent to defer rent on 20.10.20 and the Respondent had then not adhered to that agreement. The Respondents' agent had signposted the tenant to advice sources, fund sources and sought proposals for a resolution. The Respondent had simply not engaged meaningfully in this process for over two years and not honoured the previous mutually agreed payment arrangement.

6 The Respondent has not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicants' steps to try and engage the Respondent.

7. The Tribunal has then in depth considered the representations of both parties with regard to the issue of reasonableness.

8. The Tribunal acknowledges that granting the order will in all likelihood have a negative impact on the Respondent's mental health. Becoming homeless is a situation, which would have a negative impact on almost all tenants but there is no evidence provided to show how this would specifically impact on the Respondent. On the other hand the Tribunal also took into account that, as stated by Ms McLanders, the ongoing proceedings and the increasing rent arrears and debts themselves also cause the Respondent difficulties. Ms Wooley made the point that in the long run the Respondent may well benefit from changing to a property she can afford so that this additional stress is removed from her. No evidence has been produced to show that the Respondent's health prevented her from working with the Applicants' agents in addressing her situation. She simply has persistently failed to engage with attempts to assist her in making arrangements to address her financial and housing situation. The Tribunal has taken into account the age of the Respondent's children. There was no evidence led to show that the children have additional needs which are specifically better met at the current property or the primary school the oldest child attends. The Tribunal has taken into account the level of arrears and notes that even in the recent Cost of Living (Tenant Protection) (Scotland) Act 2022 the level of rent arrears, being 6x the monthly rent, would qualify as "substantial rent arrears" in terms of newly introduced ground 12 A. The significant arrears have had a negative impact on the Applicants' financial position as this property is the only rental property they own and the rent has not been fully paid over a period in excess of two years.

9. In light of the fact that for over two years the Respondent has not taken any steps to address her situation despite having been offered assistance from medical professionals and from the landlords and their agents there seems little prospect of the Respondent's attitude changing. The arrears continue to increase. On balance the Tribunal considers that it is reasonable in all the circumstances to grant an eviction order in this case ground 12 of schedule 3 of the Act. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

10. However, the Tribunal also recognises that it will be appropriate to give the Respondent further time to arrange suitable alternative accommodation and to seek appropriate help with this from the local authority, now she knows that this is a matter she has to address urgently. The Respondent's representative asked the Tribunal to consider a delay in execution of any order under rule 16A. This was explicitly not opposed by the Applicants. The Tribunal, having regard to the time of year and the family situation of the Respondent considers that the order should only become enforceable on 28 February 2023, thus giving the Respondent almost 3 months to take appropriate steps to seek alternative accommodation. The Tribunal thus determines that in terms of S 51(4) of the Act the tenancy ends on 28 February 2023.

E : Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act. The order will not become enforceable until 28 February 2023.

F: 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.

Petra Hennig-McFatrige

Legal Member/Chair

1 December 2022

Date