



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/22/2873

Re: Property at Flat 4, Friars park, Institution Road, Elgin, IV30 1QU (“the Property”)

Parties:

Ms Debbie Low, 36A Shenley Road, Camberwell, London, SE5 8NN (“the Applicant”)

Mr Robert Furlong, Flat 4, Friars park, Institution Road, Elgin, IV30 1QU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse to grant an eviction order.

Background

1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Private Residential Tenancy Agreement between the parties dated 20 November 2020.
- (ii) Notice to Leave dated 24 January 2022 stating that proceedings for possession will commence no earlier than 28 July 2022 and citing ground 12, together with proof of service on the Respondent by recorded delivery;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Moray Council;
 - (iv) Rent Statement;
 - (v) Copy correspondence from the Applicant's agent to the Respondent in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 28th November 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 28 November 2022. The Applicant was represented by Mr Charlie Beck. The Respondent was also in attendance. The Tribunal explained the purpose of the Case Management Discussion and asked the parties to address it on their respective positions.
- 4 Mr Beck explained that the Applicant sought an eviction order due to the rent arrears. The Respondent had made efforts to reduce the arrears however the Applicant was seeking to protect herself by seeking the order. Mr Beck confirmed that the arrears stood at £1870, up to the 19th December 2022. Mr Beck confirmed that he had been in constant communication with the Respondent, who had been upfront about his health problems and his job search. Mr Beck understood that the Respondent had changed jobs and was now back on his feet. However the rent arrears were considerable. The Applicant was therefore seeking an eviction order to prevent them from escalating again. She had her own bills to pay and a mortgage over the property. This had caused her some financial unrest.
- 5 The Respondent confirmed that he had experienced some severe health issues which led to him losing his job. His health issues had now subsided and he was much better. The Respondent confirmed that he had taken on a temporary job to get back on his feet and he was now in permanent employment. He had been making payments towards the arrears of around £200 per month. He was grateful of the patience the Applicant had shown and the help they had offered him. He fully intended on carrying on making payments to reduce the arrears He offered to pay a minimum of £160 per month, but would endeavour to pay £200 where possible. The Respondent confirmed that he resides in the property with his son who is 20 years old and suffers from mental health problems. His son was employed as an apprentice. The Respondent confirmed that he had

no family in the area that he could stay with in the event that an eviction order was granted.

- 6 Mr Beck confirmed that the Respondent had been making payments towards the arrears. The rent was £600 per month and the Respondent had been paying around £800 for the last three months. Mr Beck then mentioned noise complaints that had been received, which were concerning to the Applicant. The Respondent advised that one of the complaints occurred when his son interrupted a burglar and this had been reported to the Police. He was aware of another complaint when his son had friends round in the garden and their voices were a bit louder than they should have been. He had spoken with his son about this and put a stop to it. The Respondent confirmed that he had spoken with the housing department of the local council and had been told to keep making payments to the arrears.

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, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

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 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 subparagraph (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. (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.

8 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

- 9 The parties entered into a Private Residential Tenancy Agreement dated 20 November 2020.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 On 25 January 2022 the Applicants delivered a Notice to Leave to the Respondent by recorded delivery mail. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 28 July 2022.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £600 per calendar month.
- 14 As at the date of service of the Notice to Leave arrears in the sum of £2000 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £1870 were outstanding.
- 16 The Respondent is in permanent employment.
- 17 The Respondent has been making payments towards the rent and arrears of around £800 per month.
- 18 The rent arrears are decreasing as a result.
- 19 The Respondent resides in the property with his son who suffers from mental health issues.
- 20 The Applicant has complied with the pre-action requirements by advising the Respondent of his rental obligations and arrears outstanding and offering support.
- 21 The Respondent has maintained communication with the Applicant's agent throughout the tenancy.
- 22 It is not reasonable to make the order sought by the Applicant.
- 23 The provisions of ground 12 of Schedule 3 of the 2016 Act have not 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. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence.
- 25 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 26 The Tribunal accepted that there were rent arrears outstanding in the sum of £1870, however it had cognisance of the fact that the Respondent was now making payments to reduce the balance. He had offered to continue making payments of around £200 per month which would clear the sum due within a year. The Tribunal accepted his account of how the arrears had accrued, which followed a period of ill health, and found him to be credible in this regard. He appeared genuine in his dealings with the Applicant and her agent and expressed remorse about the position he had found himself in.
- 27 Accordingly, whilst the Tribunal accepted that there were rent arrears still outstanding, ultimately the Tribunal concluded that it would not be reasonable to grant an eviction order having regard to the particular facts and circumstances of this case, and in particular the Respondent's efforts to address the outstanding rent arrears. For the avoidance of doubt, the Tribunal did not consider the reference to noise complaints relevant to this application which proceeded on ground 12 and therefore these did not form part of the Tribunal's determination of the application.
- 28 The Tribunal therefore determined to refuse the eviction order sought by the Applicant. 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 November 2022

Legal Member/Chair

Date