



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/22/1081

Re: Property at 9 Laberge Gardens, Motherwell (“the Property”)

Parties:

Lewis George MacFadyen, 13 North Street, Motherwell, ML1 1LQ (“the Applicant”)

David Walker, 9 Laberge Gardens, Motherwell, ML1 4FD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-

- a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the rent statement
 - letter to tenant regarding pre-action requirements
 - title sheet
3. The Applicants' representative, Mrs Hogg from Stodarts LLP, appeared on behalf of the Applicant. There was no appearance by the Respondent. Trainee solicitor Lewis Dobbie was observing.
4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers on 29 June 2022. As we were satisfied that the Respondent had been served with notice of today's hearing we were therefore prepared to proceed with today's hearing in his absence.

Discussion

5. The tribunal considered papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. We noted that the notice to leave had been served by recorded delivery 22 September 2021.
6. The applicant's representative advised that the notice to leave sought eviction under ground 12, rent arrears for a period of more than 3 months. She advised that the current level of arrears were £5640.18. She advised that there had been arrears on the rent account since March 2021. The respondent failed to pay three full months rent around that time. The letting agent then contacted the housing benefit section and they had started paying housing benefit direct to the landlord since June 2021. She advised that the benefits did not make up all the rent, there was a shortfall and the tenant had ignored all requests to address the shortfall and the arrears. The arrears were continuing to accrue. The only contact that the letting agent had had was from the tenant's mother when the notice to leave had been served. She advised that the tenant's mother had merely advised that her son would not leave without a formal order, she had made no offer to repay the arrears.

7. She advised that the tenant resided in the property, she believed alone, although she considered his girlfriend may reside there sometimes, but this would be without permission and in breach of the tenancy. There are no dependents in the property. His family reside in the locality, and he therefore has family he could reside with. She advised that in addition to not paying the rent shortfall, he has also refused access to the property, and there has been no annual property inspection and further the landlord has been unable to get in to do the safety checks.
8. She advised that the landlord inherited the property from his father. He had not been old enough to grant the lease when his father passed away. He is now at university; this property was left to provide some financial support to the landlord as he grows up. The failure to pay rent has had a detrimental financial impact on the landlord.
9. The applicant's agent advised that there was no evidence that the rent arrears are due to any delay or failure in the payment of benefits.
10. The Applicant's representative advised therefore that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and she was not aware of any outstanding benefits issues causing the arrears. The Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

11. The Tribunal found the following facts established:-
12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 28 July 2020.
13. The tenancy was for the property 9 Laberge Gardens, Motherwell.
14. The tenant is David Walker.
15. The landlord is Lewis MacFadyen.

16. Clause 8 of the Tenancy Agreement provides that the rent for the property is £650 per calendar month. It is payable in advance and due on the 28th of each month.
17. There was a notice to leave addressed to the Respondent. It contained information from the Respondents as to why an eviction order was sought. It was dated 21 September 2021. It confirmed that proceedings would not be brought until 25 March 2022. It had been served by recorded delivery and delivered on 22 September 2022.
18. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
19. That rent arrears had been outstanding since March 2021.
20. There were rent arrears outstanding at the date of the service of the notice to leave of £2657.28 which totalled at least one month’s rental due under the tenancy.
21. Rent arrears had been outstanding for at least three months when the notice to leave was served.
22. There were rent arrears outstanding at the date of the application, namely £4480.18 which totalled at least one month’s rental due under the tenancy.
23. There appeared to be rent arrears outstanding at today’s date totalling £5640.18, at least one month’s rental due under the tenancy.
24. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
25. There was correspondence dated 25 January 2022 providing information and advice about rent arrears and support available during the covid pandemic. This letter had been sent recorded delivery and had been signed for.
26. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

27. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
28. The ground which the Applicant seeks eviction under is ground 12 rent arrears. Sub paragraph 1 states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. Sub paragraph 2 provides that the Tribunal must find that the ground named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
29. The tribunal finds that there are rent arrears on the account which were in existence for more than three months when the notice to leave was served. There are still rent arrears due. We do not believe that there has been a delay or failure of the payment of relevant benefits which has caused the arrears. We find the ground established.
30. We must now consider whether it would be reasonable to grant the order. The arrears have been increasing since March 2021 and are now in excess of £5600. While the tenant has been making some payments to rent, those payments are from benefits being paid direct from the local authority to the landlord; and they do not meet the monthly rent due. The tenant has failed to engage with the letting agent and the applicant in relation to dealing with the rent arrears and the shortfall in rent. There is no evidence of any explanation by the tenant to explain why the arrears have arisen. There appears to have been no offer to repay any of the arrears. The landlord is a young person at University and this property was left to him by his father to provide financial support to him. We consider that it is relevant that the landlord is able to use the property as a means of financial support, particularly while he is in further education. We consider that it is reasonable to grant the order for eviction.
31. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent we consider that the terms of ground 12 met, and that it would be

reasonable to grant an order for possession under Schedule 3 Ground 12 - rent arrears.

Decision

32. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

09/08/2022

Legal Member/Chair

Date