



Decision with Written Statement of Reasons on a Case Management Discussion 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/23/1364

Re: Property at 47 Lanehead Terrace, New Cumnock, KA18 4EW (“the Property”)

Parties:

Mr David Litman, 20 Craigens Road, Cumnock, KA18 3AS (“the Applicant”)

Ms Carolanne McCrae, 47 Lanehead Terrace, New Cumnock, KA18 4EW (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Ann Moore (Ordinary Member)

This was a Case Management Discussion to consider an application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The discussion took place by teleconference. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved.

1. Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

2. Attendance and Representation

The Applicant was present and not represented.

The Respondent was not present. She had been served by Sheriff Officer on 9th August 2023. She had also received intimation of this continued hearing and further documentation the Tribunal had directed be lodged.

3. Background/ Preliminary Matters

The Case previously called before the Tribunal on 6th September 2023 and was adjourned to this further Case Management Discussion. This was to allow the Applicant to fairly intimate the request to amend the application upon on the Respondent in terms of Rule 14 of the Procedure grounds to include Ground 14.

The Tribunal had noted during the Hearing that the Applicant sought to proceed mainly on Ground 14 which had not been the reason for his application. Whilst he had asked in an email to include Ground 14 to the Tribunal administration the information he wished to base same on related to matters occurring after the application commenced. As a new issue with a significant bearing on the application and implications in terms of the Cost of Living provisions the Tribunal was of the view that the Applicant should he wish to formally amend his application should do so in terms of Rule 14 of the Tribunal procedural rules. The Applicant had now done so having lodged the documentation on 14th September 2023. The Amendment had been intimated on the Respondent. The Tribunal allowed the Amendment.

The Respondent was not present the Applicant said the last contact he had with her was on the 9th November 2023 when he had provided to her an updated copy of the rent book. He said there was no reply. On 15th October 2023 he received whats app messages responding to what he considers the further information he had lodged with the Tribunal about the neighbour complaints about her behaviour.

4. Case Management Discussion

The Applicant proceeded on the basis that he sought an Eviction Order on the basis of Grounds 11, 12 and 14. He submitted the arrears had been persistent throughout the tenancy. He submitted that this was now over 6 months of rent. The Applicant confirmed that the rent arrears were now £3120.59 as at 6th November 2023. He submitted that he was granted a payment order on the 6th September 2023 for the sum of £2307.46.

In terms of Ground 11 the Applicant submitted he relied on same as he had been unable to obtain gain access to the property. He submitted further that he has been granted his 3rd right of entry application. The Tribunal will now assist him to gain access to the property on the 6th December 2023. This is to maintain and repair the property and to carry out gas safety and electrical safety certificates.

The Applicant also explained he relied on Ground 14 due to the Anti-social behaviour causing nuisance at property over an extended period of time. The Applicant explained that the initial complaints about the rubbish in the garden of the property came from South Ayrshire Council. They had started to assist the Respondent and gave advice to her initially to assist with the rubbish. Nothing was done. He said the letters from the council escalated to a formal notice and then the Respondent was fined. He referred to the pictures lodged and he said that he visited a week ago to see if the behaviour was persisting. He also took photos and has lodged same and the rubbish continues to persist. He has received an abatement order from South Ayrshire Council. This was a statutory nuisance order. He considered in terms of Ground 14 the Respondent was engaging in behaviour that causes or is likely to cause another person alarm, distress, nuisance or annoyance. He had spoken to a neighbour. She was distressed and spoke of rats and vermin. There was no relationship to the complainant and he had been given her contact details from the private rented sector team of South Ayrshire Council.

The Applicant said he has 7 properties including this property. The Applicant did not have much information on the Respondent but confirmed she was 38yrs, had an adult child and 2 further children. One of the children is a baby and the other child is maybe 7 or 8 years old.

5. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had received notification of the proceedings by Sheriff Officer on 9th August 2023 and had not challenged same by written representations or attendance. The Respondent had received further intimation of the new hearing date without an appearance. The Tribunal had also sought by Direction from the Applicant certain information and steps to be taken to ensure fairness in process for the Respondent. The Tribunal in doing so was satisfied it had all of the necessary information required to allow a decision to be made.**
- 2. The Applicant sought an Order for Eviction on the grounds of Ground 11, breach of tenancy, Ground 12, rent arrears and Ground 124 anti-social behaviour.**

3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.
4. There was a PRT in place between parties dated 2nd November 2020. A Notice to Leave was sent to the Respondent on 28th March 2023. Rent per calendar month due is £425.
5. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
6. At the date of the application on 27th April 2023 the Respondent was in rent arrears to the amount of £2488.43. The Applicant has sent pre-action protocol letters on rent arrears. A Payment Order was granted by the Tribunal for rent arrears on the property and this PRT on 6th September 2023 for the sum of £2307.46. As at the 6th November 2023 the Respondent was in arrears of rent to the sum of £3120.59.
7. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
8. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3
9. The Tribunal found that the requirements of Ground 14 of Schedule 3 to the Act had been met. The Tribunal was satisfied that the Respondent had engaged in relevant anti-social behaviour. The Tribunal considered the Respondent had behaved in an anti-social manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance. The Tribunal also considered the nature of the behaviour had been long standing without improvement or an attempt to rectify the nuisance of rubbish within the property affecting others for a significant period of time.
10. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
11. The Tribunal noted the Local Authority under the Homelessness etc (Scotland) Act 2003 Act had been notified. On the information given to the Tribunal by the Applicant the Respondent was 38yrs, had an adult child and 2 further children. One of the children is a baby and the other child is maybe 7 or 8 years old. The Respondent has been served a statutory nuisance notice as a landlord in terms of the Environmental Protection Act 1990 on 30th August 2023 due to the condition of the property and the rubbish within same affecting others. The Tribunal found an Order was reasonable in terms of the nature of the antisocial behaviour but also in terms of the Coronavirus (Scotland) Act 2020.
12. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent. The Application will not be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022. However the Tribunal considered they had to apply the overriding objective and weigh the interests of both parties and in the interest of

natural justice due to the presence of 2 young children in the property, including one who is a baby the Tribunal decided to delay enforcement of the order until on or after 24th January 2024. The Tribunal delayed execution of the order until 24th January 2024, in terms of Regulation 16A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018.

6. Reasons for Decision

The Tribunal had before it extensive evidence showing rent arrears including rent statements and pre-action letters in terms of the rent protocol. The Tribunal had also been provided with colour photographs of the property and extensive third party correspondence from Environmental Health and from South Ayrshire Council regarding the condition of the property and the extend of rubbish and debris in the garden of same over a protracted period. Correspondence from the Private Sector Housing Unit from Ayrshire Council in respect to a “large build up of rubbish” in the property from 30th April 2021. The correspondence continues to 2023 noting complaints and vermin with food waste and nappies thrown in the garden. The Tribunal also had before it notice of letters sent to the Respondent providing agencies to assist with rubbish abut also requesting the nuisance be rectified. South Ayrshire Council had also served a notice on the Respondent due to the behaviour and on the basis of non-compliance had then fined the Respondent. The Tribunal also heard credible evidence of the Applicant that the Respondent is in rent arrears and that Ground 12 was met. The rent statement and pre-action protocol letters for rent arrears were lodged. The Tribunal weighed up the circumstances and determined on balance that the order be delayed. The Tribunal did not consider that Ground 11 was satisfied on the basis the application and the Notice to leave did not provide specific particulars of the alleged breach of tenancy. The Tribunal had not been provided with the details required in respect of seeking access but did note that the Applicant had successfully pursued applications to seek access to the property by the Respondent. There was a lack of notice in the application and the evidence lodged to allow Ground 11 to be established in fact. This did not affect the decision and the Tribunal was satisfied that Grounds 12 and 14 were met and proceeded to grant an order.

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.

Karen Kirk

23rd November 2023

Legal Member/Chair

Date