



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2936

Re: Property at 250 Whifflet Street, Coatbridge, ML5 4SH (“the Property”)

Parties:

Mr Manvir Singh, Lesley Miller, Milton House, Milton Lockhart Estate, Rosebank, Carluke, ML8 5QA (“the Applicant”)

Ms Margaret Wilson, 250 Whifflet Street, Coatbridge, ML5 4SH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background/Case Management Discussion – 7 December 2023

1. The application submitted on 24 August 2023 sought an eviction order against the Respondent under Ground 12 – rent arrears over 3 consecutive months. Supporting documentation was submitted, including a copy of the tenancy agreement; rent account; Notice to Leave, Section 11 Notice and correspondence in respect of the pre-action requirements. Following initial procedure, the Tribunal accepted the application on 11 September 2023, and papers were served on the Respondent personally by Sheriff Officer on 27 October 2023. A Case Management Discussion (“CMD”) was fixed for 7 December 2023. No written representations were lodged by the Respondent prior to the CMD.

2. A Case Management Discussion ("CMD") took place by telephone conference call on 7 December 2023 at 10am and was attended by Ms Vikki McGuire of Jewel Homes, on behalf of the Applicant and by the Respondent, Ms Margaret Wilson.
3. Detailed discussion took place at the CMD on 7 December 2023. Ms Wilson was asked to confirm her position in relation to the eviction application. Initially, Ms Wilson indicated that she was not opposing the application, that she understood the Applicant's position and that she did want to leave the Property, but was concerned about the timescale of the eviction, given the current eviction ban. It was clarified by the Legal Member that this application was caught by the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA") and that, in the event of an eviction order being granted, it would not be enforceable until the end of March 2024. However, Ms Wilson went on to explain that she had gone through a relationship breakdown, had sought help from family members and that they would help her out financially with the arrears but that the Applicant was not accepting this.
4. Ms McGuire was asked to confirm the Applicant's position. She confirmed that the Applicant had instructed that an eviction order should be sought. The Applicant wished to sell the Property. She advised that the arrears then amounted to £5,725 which is more than 6 months' rent arrears and thought, in these circumstances, that the eviction ban would not apply. She did, however, indicate that the Applicant would still be prepared to give the Respondent a bit more time to vacate. The Legal Member explained that the COLA legislation had introduced new grounds of eviction to which the ban does not apply, one of which is substantial rent arrears of 6 months or more but that this application was not brought under that ground and that, either a fresh application would be required or an amendment to this application, but, either way, the Tribunal would not be able to consider granting an order under a different ground at the CMD than that stated in the application. Ms McGuire indicated that she would prefer to proceed on the existing ground.
5. The Legal Member explained that, apart from being satisfied that the ground for eviction was established, the Tribunal also required to be satisfied that it was reasonable to grant the eviction order sought, in all the circumstances of the case.
6. Ms McGuire was asked to provide the background to the application. She stated that the rent account had gone into arrears in 2020 and the amount of arrears have gone up and down since. There was a period of some months when there were no payments made at all. They have mostly had communication and engagement from the Respondent but this had been more at certain times and less at others. A payment plan was put in place but not adhered to and this led to them being instructed by the Applicant to serve notice. The Applicant is selling up all their rental properties and now wish to sell this Property too. Ms McGuire confirmed that there has been one further payment made to the rent account since the Rent Statement was lodged. This was £595 on 18 October 2023. The balance outstanding was £5,725. In response to questions from the Tribunal Members, Ms McGuire confirmed that there was a mortgage over this

Property and that the Applicant had a portfolio of 13 properties, 3 of which were due to sell shortly. The reason the Applicant wished to sell is that, due to a change in their circumstances, they requiring to come out of the private lettings market. Ms McGuire confirmed that she was certain the Applicant would accept a lump sum payment to clear the arrears but that he would still wish to sell at some point in 2024.

7. Ms Wilson confirmed that she accepted the amount of the arrears was as stated. She explained that the reason for the arrears was that her partner was ill and in hospital for a time and had no money coming in as he was unable to work. He still lived with her at the Property but their relationship has broken down and he was currently looking for somewhere else to live. Ms Wilson stated that she had been in hospital too and unable to work for a period between September and November 2023. She worked 32 hours a week and was not in receipt of benefits. However, she was proposing to apply for Universal Credit once her partner leaves and understood that she will receive around £400 per month from Universal Credit to pay towards her rent. Ms Wilson stated that things had just got worse and worse and got on top of her and this was why she had not always been able to manage her rent. She confirmed that she had two children living with her in the Property, aged 12 and 23. Her adult son did contribute financially towards household costs but is between jobs at the moment. Ms Wilson had been looking at alternative private lets but the rents are too high. She had also been in contact with the local authority and made an application for housing. However, nothing would happen until an eviction order is granted. In response to questions from the Tribunal Members, Ms Wilson confirmed that the financial assistance from family members she had referred to was such that they would be able to provide her with a lump sum sufficient to clear all the arrears, although this would not be available until after Christmas. She confirmed that she would be able to manage the ongoing rental payments herself. She would prefer the opportunity to clear the arrears so that she does not have a rent arrears eviction hanging over her and asked the Tribunal to continue the CMD to a date in the new year, rather than grant an eviction order at that stage. She reiterated that she does wish to leave the Property and intended to do so if she was given some more time.
8. The Tribunal Members adjourned and, on re-convening, advised that it was considered appropriate, given the position of both parties, to adjourn to a further CMD to allow Ms Wilson an opportunity to clear the arrears. Ms McGuire asked for clarification of the date in January by which Ms Wilson would be able to clear the arrears. Ms Wilson was unable to say but undertook to keep Ms McGuire informed regarding this. Ms McGuire requested an early date as possible for the continued CMD, given the Applicant's position. Parties were asked to inform the Tribunal of any developments in advance of the adjourned CMD.
9. On 9 February 2024, the Applicant's representative submitted by email an updated rent statement, showing an increased balance owing of £6,320, and some further written submissions confirming developments which had taken place since the previous CMD. There was no contact with the Tribunal from the Respondent prior to the adjourned CMD.

Case Management Discussion – 14 March 2024

10. The CMD took place by telephone conference call on 14 March 2024 at 10am and was attended again by Ms Vikki McGuire of Jewel Homes, on behalf of the Applicant and by the Respondent, Ms Margaret Wilson. The CMD called before the same Legal Member as previously but a different Ordinary Member of the Tribunal.
11. After introductions and introductory remarks by the Legal Member, Ms Wilson was referred to the previous CMD, the updated rent statement and submissions lodged on behalf of the Applicant and was asked to update the Tribunal on her position.
12. Ms Wilson confirmed that she had a fall-out with the family member who was going to pay off her arrears. She is worried and ashamed about what is happening and does not know what to do. She advised that she has not been for any advice since the previous CMD, nor applied for benefits as her former partner is still living with her. He is working but is not contributing financially to the household. He has mental health issues too and they do not have a good relationship. He has his own property but cannot leave to live there as he has a tenant there currently. Ms Wilson confirmed that she is working for a manufacturing company and works 32 hours a week, earning £280 per week. She is not opposing the eviction but would prefer it not to be granted due to rent arrears and still intends to try and pay off the arrears. She accepts that the arrears balance is £6,320. It was clarified that she has made two payments since the previous CMD of £595 each, one at the start of February and another at the start of March. The later payment is not shown in the updated rent statement as it was prepared earlier than that, but likewise, the rent payment due for March is not shown either, so the arrears balance is still £6,320. Ms Wilson has not been back in touch with the local authority about housing and understands that the situation is still the same – that she will not be offered anything until the Tribunal process is finished. Ms Wilson explained, however, that she is going to look at a private let in Bellshill tomorrow and that it is proposed that her aunt acts as her guarantor or obtains some sort of guarantor loan to help her out financially. It is a three bedroom property she is looking for and the rental due in respect of the private let she is looking at is £895 per month. However, she thinks she will receive Universal Credit help with her rental costs once she is living separately from her former partner. Ms Wilson still lives with her son, aged 12, and her older son, aged 23, stays with her sometimes but also has a partner with whom he also stays. It was noted by the Tribunal that her older son is a qualified joiner and contributes £20 per week to her. Ms Wilson's younger son attends school locally but this is only five minutes drive away from the private let she is looking at. Although her car is currently off the road, Ms Wilson will be driving back to Coatbridge for her work and will be able to drop her son off at school.
13. Ms McGuire confirmed that the Applicant would like an eviction order granted in the circumstances. The rent arrears are impacting on the Applicant in that there is still a mortgage to pay on the Property and the shortfall is having to come from other property income from the Applicant's portfolio. She reiterated

that the Applicant is in the process of selling up his portfolio as he is coming out of the rental market altogether and intends to sell this Property as soon as possible. The Applicant sympathises with the Respondent's position as they are aware of the difficulties with the private rented market currently but the rent arrears are high. Although the Applicant wishes an eviction order granted, Ms McGuire confirmed that they may be able to give the Respondent a bit more time if she has difficulty securing another property. She stated that the Applicant would be agreeable to the Tribunal extending the timescale for the eviction taking place by a month or so beyond the 30 days period that already applies. Ms Wilson confirmed that such a delay would be beneficial to her.

14. The Tribunal adjourned briefly to consider the application in private and, on re-convening, confirmed that the eviction order would be granted, subject to a further delay in the timescale for enforcement of the eviction order of one month. It was explained that the Applicant can voluntarily extend the timescale beyond that period if they so wish. There was brief discussion regarding the process to follow and parties thanked for their attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 1 January 2018.
3. The rent in terms of the tenancy is £595 per calendar month.
4. The rent account first fell into arrears in 2020 and rent payments have been erratic since then.
5. Rent arrears amounted to £3,550 when Notice to Leave was served in April 2023 and now amount to £6,320.
6. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was sent to the Respondent by email on 28 April 2023.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 28 May 2023.
8. The Tribunal Application was submitted on 24 August 2023.
9. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
10. The previous CMD on 7 December 2023 was continued to allow the Respondent an opportunity to clear the rent arrears during January 2024, with family assistance, and to make ongoing rental payments.

11. The rent arrears have not been cleared and, although two rental payments were made in February and March 2024, the last payment prior to that was in October 2023.
12. The Respondent is still occupying the Property, together with her estranged partner and two children, aged 12 and 23.
13. The Respondent has been experiencing personal, mental health and financial difficulties.
14. The Respondent has applied to the local authority for housing and is also looking at securing an alternative private let.
15. The Respondent intends to make application for state benefits and anticipates that she will receive assistance with her ongoing housing costs.
16. The Respondent intends to move out of the Property when she secures alternative housing.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided on behalf of the Applicant and by the Respondent herself.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) as follows:-

“Rent arrears

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

(2).

(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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(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) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should 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 which should 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.”

The Tribunal was satisfied that all elements of Ground 12 were met. The Respondent admitted the extent of the rent arrears.

4. The Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The rent account had been in arrears for a significant period of time and amounted to a significant sum (£6,320) which the Tribunal was satisfied would be having some impact on the Applicant's finances, given that there were ongoing outgoings to pay in respect of the Property. Although the Respondent intends to apply for state benefits when her home circumstances change, this was not a case where benefits have been in payment, or already applied for and there has been a failure or delay in payment of benefits, in terms of Ground 12(4)(a). In addition,

the Tribunal was satisfied that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent and resolve the arrears situation with her. Although the Respondent sometimes engaged with the Applicant's letting agent, this was not consistent. She has failed to adhere to previous payment plans, including an offer made at the previous CMD to clear the arrears in full during January 2024. The Tribunal noted the Respondent's explanations for the rent arrears accruing in the first place, her current difficult family and financial circumstances and that she has been trying to make rental payments when she can manage. The Tribunal also noted, however, that the Respondent has had notice of these proceedings for almost a year and has already applied for local authority accommodation as well as now making arrangements in relation to an alternative private let. The Tribunal noted that the Respondent was not opposing an eviction order being granted as such and appeared to accept that she could not continue to live in the Property, in the current circumstances. However, given that the Applicant was prepared to allow an additional period to assist the Respondent in securing alternative accommodation and the Tribunal also considered that this would be beneficial to the Respondent, the Tribunal determined that it was reasonable to grant an eviction order at the CMD, subject to an extra one month (30 days) extension in the timeframe for enforcement.

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.



Legal Member/Chair

Date 14 March 2024