



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/24/1455

Re: Property at 36B Ogilvy Place, Arbroath, DD11 4DF (“the Property”)

Parties:

Jennifer Anne Warden, Farmhouse, North Mains of Dun, Montrose, DD10 9LW (“the Applicant”)

Kris Buick, 36B Ogilvy Place, Arbroath, DD11 4DF (“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 make 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;
- (ii) Notice to Leave dated 22 February 2024 stating that proceedings for possession will commence no earlier than 23 March 2024 and citing grounds 12 and 12A, together with proof of service on the Respondent by Sheriff Officers on 23rd February 2024;
- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Angus Council together with proof of service by email;

- (iv) Rent Statement; and
 - (v) Copy letter from the Applicant's representative to the Respondent dated 24 April 2023 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. The application was therefore referred to a Case Management Discussion, 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.
 - 3 On 1 July 2024 the Applicant's representative emailed the Tribunal with an updated rent statement confirming that the sum due to the Applicant was £5,700. The Applicant's representative provided further submissions with regard to the reasonableness of the eviction order. In summary he advised that the property was a two bedroom top floor flat and the Respondent was the sole resident. He was understood to be in employment, and not in receipt of any benefits. The Applicant and her husband jointly owned six properties and a farm. They were not professional landlords and maintained other employment. The Respondent's failure to pay rent had caused the Applicant financial difficulties, resulting in her having to cash in savings to maintain the property costs. Supplemental borrowing had also been taken out by the Applicant to cover the deficit. The rental income for the properties owned by the Applicant allowed for a total of £277.18 per month in profit, without factoring in other costs. The Applicant was at risk of losing the property, along with the farm which was her principal home, if payments were not maintained.
 - 4 No written representations were received from the Respondent.

Case Management Discussion

- 5 The Applicant was represented at the Case Management Discussion by Mr David Gray. The Respondent was not in attendance. The Tribunal noted that he had been served with the application paperwork, which included the date and time of the Case Management Discussion together with instructions for joining the teleconference. The Tribunal therefore determined to proceed in his absence. Mr Gray confirmed that the Applicant sought an eviction order and made reference to his written submissions. In response to questions from the Tribunal he confirmed that the Respondent resided alone, with no dependents. The arrears now stood at £6150.

Relevant Legislation

- 6 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 subparagraph (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.

Schedule 3, Part 12A

(1) It is an eviction ground that the tenant has substantial rent arrears.

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

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

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

Findings in Fact

8 The parties entered into a Private Residential Tenancy Agreement which commenced on 10 July 2022.

9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

10 In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £450 per calendar month.

11 On 23 February 2024 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers. The Notice to Leave cited grounds 12 and

12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 23 March 2025.

- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 As at the date of service of the Notice to Leave arrears in the sum of £3900 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £6150 were outstanding.
- 15 The Applicant has made efforts to engage the Respondent and encourage him to take steps to maintain payments to the rent account.
- 16 The last payment to the rent account was on 22 August 2023.
- 17 The Respondent resides alone and is believed to be in employment.
- 18 The Applicant is not a professional landlord. The Applicant owns six other properties and a farm which is her principal home.
- 19 The rent arrears have had, and continue to have, a significant impact on the Applicant in terms of increased borrowing costs and financial risk. The Applicant has had to cash in savings to meet the deficit caused by the rent arrears.

Reasons for Decision

- 20 The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that it would not be prejudicial to the parties to do so, having considered the application paperwork, the additional written representations from the Applicant and the submissions at the Case Management Discussion. The Respondent had been given the opportunity to make written representations, and to attend the Case Management Discussion, but had failed to do so. The Tribunal was therefore satisfied that it could make a decision in his absence.
- 21 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon grounds 12 and 12A 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.
- 22 The Tribunal then considered the provisions of grounds 12 and 12A. The Tribunal accepted the evidence submitted by the Applicant, as reflected in its findings in fact, finding this to be wholly credible. The Tribunal noted that the

Respondent had not put forward anything to contradict the position outlined by the Applicant.

- 23 The Tribunal therefore accepted the submissions from the Applicant's representative regarding the rent account. The Tribunal was further satisfied that the arrears were not a result of any failure or delay in the payment of a relevant benefit, on the basis that the Respondent was believed to be in employment, and there was no evidence before the Tribunal to suggest that he had any such entitlement.
- 24 The Tribunal therefore went on to consider the question of reasonableness. The Tribunal accepted that the rent arrears were having a significant impact on the Applicant, and that she was at risk of defaulting on her borrowing as a result. This risked not only her ownership of the property, but her principal home. There was no credible explanation before the Tribunal as to why the rent arrears had accrued, nor why the Respondent had failed to make any payment to the rent account since August 2023. As a result the rent arrears were significant and had almost doubled since the Notice to Leave had been served. The Tribunal also took into account the fact that the Respondent was a single male who resided alone. The Tribunal was therefore satisfied that there were no children at risk of homelessness within the household.
- 25 Accordingly, having identified the above factors as relevant to the questions of reasonableness, the Tribunal concluded that grounds 12 and 12A had been met and it would be reasonable to make an eviction order in this case.
- 26 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

19 July 2024

Legal Member/Chair

Date