



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/24/1996

Re: Property at 1 Hillhead of Fechil, Ellon, AB41 8NR (“the Property”)

Parties:

Hillhead & Newton Farms, 58 Hepburn Gardens, St Andrews, Fife, KY16 9DG (“the Applicant”)

Miss Sophie Henderson, Mr Lyle Stuart, 1 Hillhead of Fechil, Ellon, AB41 8NR (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order with execution of said order suspended until 24 January 2025.

Background

1. By application to the Tribunal dated 1 May 2024 the Applicant sought an eviction order against the Respondents in respect of the property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Private residential tenancy agreement between the parties dated 16 and 17 May 2023;

- (ii) Notice to Leave dated 13 March 2024 stating that proceedings will not be raised any earlier than 13 April 2024 together with proof of delivery by email to the Respondents;
 - (iii) Section 11 notice to Aberdeenshire Council together with proof of sending by email;
 - (iv) Rent Statement; and
 - (v) Copy letters from DJ Alexander Lettings Ltd to the Respondents in compliance with the rent arrears pre-action protocol.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal 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 (“CMD”) on 9 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 3. Said notification together with a copy of the application paperwork was served upon the Respondents by Sheriff Officers on 29 October 2024.
 4. Both parties were invited to make written representations in advance of the CMD. No written representations were received.

Case Management Discussion

5. The CMD took place on 9 December 2024 by teleconference. The Applicant was represented by Mrs. Leanne Young of DJ Alexander Lettings Ltd. The Respondents did not attend. The Tribunal noted that they had received notification of the CMD in accordance with Rule 17(2) of the Rules and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed with the CMD in their absence.
6. The Tribunal asked Mrs Young for her submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
7. Mrs Young advised that the Applicant sought an eviction order. The arrears had increased to £8548, with the last payment having been made on 15 February 2024 in the sum of £250. The tenancy commenced on 17 May 2023. The account had not been free from arrears since August 2023. Mrs Young confirmed that her firm managed the tenancy on behalf of the Applicant. They had tried on numerous occasions to get in touch with the Respondents to establish a payment plan to no avail. They had chased the Respondents weekly to try and find out what was happening and had sent letters with information required under the rent arrears pre-action protocol. The last communication with the Respondents had been a brief telephone call in November 2024. The Respondents had since blocked calls from DJ Alexander. Mrs Young understood from a previous conversation with the Respondents that they had spoken with the local authority

and had been told to remain in the property until such time as an eviction order was granted by the Tribunal. Mrs Young confirmed that there was a guarantor on the tenancy that she had tried to get in touch with but there had been no response.

8. In response to questions from the Tribunal Mrs Young confirmed that £48 of the balance of arrears amounted to late payment penalties, therefore the balance of actual arrears was £8500. She advised that the Respondents were a couple who resided with a child under the age of 3. Mr Stuart was employed in the fishing industry. There was no entitlement to benefits as far as Mrs Young was aware. She had attempted to apply for direct payments from universal credit however this had been declined as the Respondents were not in receipt of the housing element. Mrs Young confirmed that the Respondents had not disclosed any health issues or vulnerabilities, and visits to the property by Mrs Young had shown them to be fit and well.
9. The Tribunal noted that the Applicant was the trading name of Edward and Alison Galloway, and the property was owned by Edward Galloway and his brother Daniel Galloway. Mrs Young confirmed that the Applicant leased the land in which the property was located from Edward Galloway and his brother on an annual basis. Mrs Young confirmed that she did not have further information regarding the terms of the lease. She explained that the property had been managed for many years by Stonehouse Lettings. Stonehouse Lettings had been acquired by DJ Alexander, with the latter taking over the management of the tenancy in November 2023. Mrs Young confirmed that there was no mortgage over the property.
10. The Tribunal adjourned to deliberate, during which time Mrs Young left the call, before resuming the CMD and confirming its decision.

Relevant Legislation

11. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

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 (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.

Findings in Fact

12. The Applicant let the property to the Respondents under a tenancy agreement which commenced on 17 May 2023.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
14. In terms of Clause 8 of the said tenancy agreement the Respondents undertook to make payment of rent at the rate of £650 per calendar month.
15. On 13 March 2024 the Applicant delivered a notice to leave to the Respondents by email.
16. The Respondents consented to delivery of notices by email under the terms of the tenancy agreement between the parties.
17. The Notice to Leave included ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 13 April 2024.
18. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
19. As at the date of service of the Notice to Leave arrears in the sum of £2698 were outstanding.
20. As at the date of this decision arrears in the sum of £8500 are outstanding.

21. The last payment to the rent account was a payment of £250 on 15 February 2024.
22. The arrears are not due to any failure or delay in the payment of a relevant benefit.
23. The Respondents reside in the property with a child who is under the age of 3.
24. The second named Respondent is employed within the fishing industry.
25. The Applicant has offered to enter into payment plans with the Respondents and has directed them to agencies for advice and support. The Applicant has provided the Respondents with the information required under the rent arrears pre-action protocol.

Reasons for Decision

26. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. The Respondents had made no representations regarding the application and had not participated in the CMD. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
27. 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 Notice to Leave complied with the provisions of sections 54 and 62 of the 2016 Act and therefore that application could be entertained.
28. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
29. The Tribunal accepted, based on the Notice to Leave submitted by the Applicant, that rent arrears of £2698 were outstanding when the notice to leave was sent to the Respondents. The Tribunal also accepted, based on Mrs Young's submissions at the CMD, that the sum had increased to £8500 as at the date of the CMD. The Respondents had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was therefore satisfied that the Respondents had been in arrears for three or more consecutive months, both at the date of service of the notice to leave and as at the date of the CMD.
30. The Tribunal then considered the reasonableness of making an eviction order, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to these.
31. The Tribunal took into account the fact that the arrears were rapidly increasing and the Respondents had repeatedly failed to meet the rent due, with no reasonable explanation provided as to why this was the case. The Tribunal

applied significant weight to these as relevant factors. The Tribunal was further satisfied that the arrears were not due to any failure or delay in the payment of a relevant benefit, on the basis that no evidence had been produced by the Respondents to suggest this was the case and attempts by the Applicant to obtain direct payments from universal credit had been unsuccessful.

32. The Tribunal considered the Applicant's compliance with the rent arrears pre-action protocol and was satisfied that the Applicant's agent had provided the Respondents with the information required under the protocol. The Applicant had produced letters that had been sent to the Respondents to evidence this.
33. The Tribunal also had regard to the Respondents' circumstances, noting that they resided with a young child. There were no known health issues or vulnerabilities, other than the age of the child. Whilst the impact of eviction on the child was a cause of concern for the Tribunal, it noted that the local authority would have an obligation to provide the Respondents with accommodation, at the very least on an emergency basis.
34. Accordingly, taking the above factors into account as relevant to the assessment of reasonableness, the Tribunal ultimately concluded that the balance weighed in favour of making an eviction order and ground 12 had been met. However, taking into account the upcoming festive period and in order to provide the Respondents with sufficient opportunity to obtain rehousing with the local authority the Tribunal determined to suspend execution of said order until 24th January 2025.
35. 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.

Legal Member:

Date: 09 December 2024

R.O'Hare

