



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/21/1432

Re: Property at 21 Gorely Place, Motherwell, ML1 2FJ (“the Property”)

Parties:

Clyde Valley Property Services, 50 Scott Street, Motherwell, ML1 1PN (“the Applicant”)

Mr John McPhee, 21 Gorely Place, Motherwell, ML1 2FJ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined it should grant 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.

Background

1. An application was 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
 - a copy of the respondent’s rent statement

- emails and letters to the respondent regarding non-payment of rent
3. The case was continued from a case management discussion on 23 August 2021. Reference is made to the terms of the note prepared for that case management discussion. A direction had been issued. Parties had responded to that direction, with the applicant submitting productions and the respondent submitting written answers, a witness statement from the respondent and productions.
 4. Ms Sanderson from the applicant appeared together with the Lettings Manager Ms McCaughey. The respondent and his legal representative, Ms Rylatt from Lanarkshire Community Law Centre appeared. The respondent gave evidence and in addition his mother, Jane McPhee also gave evidence on behalf of the respondent.
 5. It is noted that the written answers from the respondent did not challenge the competency of the application or the validity of the notices which had been served; the opposition to an order for eviction being granted was based on the question of reasonableness.

Discussion

6. Ms Sanderson for the applicant confirmed that the current arrears were now £9162.03, this was made up of monthly rent. The last payment received to rent, and arrears was on 13 August 2021 for £120. They confirmed that they were seeking an order eviction due to non-payment of rent.
7. In support of their application, they advised that respondent had been residing in the property since 2018. Regular monthly payments of rent had ceased after the payment of 23 December 2019.. They had tried to contact the respondent on numerous occasions by letters and emails, to try and help and support him. He made very little contact however with them and there was no resolution to the rent arrears. They had no choice but to serve a notice to leave to get the property back.
8. They advised that the respondent had contacted CAB in July 2021, and CAB had made an offer of £120 per week to rent and arrears. They had received 5 payments only. He was no longer upholding that agreement either.

9. While there had been no rent arrears prior to February 2020, he had had a number of rejected direct debits statements and rent payments were often made late. When this happened, they would have to contact the respondent to advise they had not received the rent and ask him to contact the housing office to discuss. So, while there was no history of rent arrears prior to February 2020, there had been late payments of rent.
10. She submitted that there had been a lot of correspondence to the respondent to try and get him to address the arrears; their efforts had not been successful, and they believed that he had had ample time to respond and sort this out. Had he done so they would not be seeking an order for eviction.
11. The respondent's agent asked questions of Ms Sanderson. She was asked about an email of 15 January 2021 that she had sent to the respondent. That email had been sent by Ms Sanderson in response to an email from him the previous day advising that he had had a terrible 2020 and that he wanted to engage and keep the tenancy. She was asked if her response of 15 January 2021 was misleading as it indicated that the arrears were so high, that he had to clear the balance and that they wanted the property back and would collect the keys. Mr Sanderson disagreed it was misleading but advised it could have been slightly better worded. She accepted that it did not confirm that the applicant needed a court order before the respondent had to leave the property but did not think that it was misleading. She submitted that the email asked him to move out on the 22 January 2021. She advised that had the respondent contacted her she would have discussed what would happen with the respondent, but there had been limited contact with the respondent. She advised that it is common practice to advise tenants that a court order is required. She had served the correct notices on the respondent. She did not agree that she had misled or given him false information.
12. She advised that she did not reject his offer to repay the arrears, but she had advised that the balance needed to be cleared. She advised that he had not made a repayment proposal. She disputed that the email of 14 January 2021 was a repayment proposal. She advised that he could have made payments to the arrears and in her email of 15 January she had provided bank details to the respondent. She advised that the respondent did not thereafter make any payments to the rent or arrears. He also did not contact her. She thought that the letter was clear, and he could have made repayments.

13. Ms Sanderson accepted that the email of 15 January could have been clearer, and perhaps Respondent was not clear that he could have got back in touch with her, however she maintained that she had provided him with bank details, and he made no payments and his next contact was not until April 2021.
14. Ms Sanderson referred to her email of 13 January 2021. She advised that this email was a follow up to her letter of 17 December 2020, which she had attached with the email, she advised that that letter confirmed that the tenancy ended on 22 January 2021. She had received no response to that letter. She wanted to find out if he was leaving and to confirm arrangements for collecting keys. She noted that that email did refer to needing to commence legal action to recover the property should he not vacate at the tenancy end date. She considered that she had given the respondent notice that legal action would be needed to remove him from the property.
15. She advised that she had followed the standard procedures of the landlords.
16. Ms Sanderson then referred to her email of 5 July 2021 to the CAB. She advised that her email referred to reviewing the respondent's payments when the case got to the tribunal. This was due to the CAB asking if the respondent could enter some sort of payment arrangement, and if so would we withdraw the eviction application. She had advised that she would discuss it with the lettings manager and monitor payments. She accepted weekly payments of £120, however she advised that they still considered that they had reached the point of no return. If the respondent could have made more substantial payments then they could have considered the application, however there was no conversation with the respondent about what would be an acceptable amount to repay. He was offering £35 to arrears every month. This was not a substantial amount. The arrears were high.
17. She advised had the respondent made contact with them she would have advised him that he needed to pay rent and more to the arrears. She would have assessed what would have been a reasonable sum by doing an assessment of income and expenditure and trying to reach a sum agreeable to both parties. She advised that her letter of 7 July 2020 makes reference to an income and expenditure assessment. She advised that she had tried to contact him on a number of occasions.

18. She said looking at the emails she had sent, she has not remade that offer of an income and expenditure assessment, but she noted that he had told her that he would pay the rent back and he had the income to do so. He had been in employment.
19. The agent for the respondent called the respondent and his mother to give evidence. The respondent confirmed that he was adopting his written statement as his evidence which had been lodged by his agent. The respondent gave further oral evidence, he spoke about the emails of 14 and 15 January 2021. He advised that he emailed on 14 January 2021 and indicated that he was going to set up a repayment plan. He had understood the 15 January email to mean that he had to pay the arrears in full and hand in the keys on the following Monday. He thought he had to leave the property. He had flights booked on the Sunday night for his work, and he had put the keys through the letter box to his property. He thought that he had to leave the property unless the balance was cleared. He advised that at the point when you? had sought to make a payment plan to clear the arrears he was working fulltime and had an average income of £5000 per month.
20. He had had to leave for work in England and when he returned he had to stay in hotels; he then ran out of finances and had to declare himself homeless, he was not sure of that date.
21. He advised that he had been on sick leave until recently. His sick pay had been reduced and this was why he had not maintained the offer of £120 a week. The £120 offer was agreed in July 2021, he had been on sick leave since April 2021. He worked with the CAB to work out what he could afford to offer to the arrears based on his income and expenditure. He had made the offer to try and avoid the eviction action continuing. He was told to pay the offer and he did for 5 weeks. The £120 was based on his income at that time in July 2021. His total income then was £310 a week. He had been receiving enhanced sick pay. He had to deduct from the £310 the cost of living including gas and electric, and his daughter's money. £120 was all he could afford.
22. He advised that he was also looking for employment. He had just recently got temporary employment with the SSSC 3 weeks ago. He advised that it was temporary, for about a month, but he had also managed to obtain further employment in Sweden. He was to speak to this new employer this week and hoped to start on 24 October

2021. He would work 3 weeks on and 1 week off; it was 55 hours a week and paid 30 euros minimum per hour. He was not relocating, and he still needed his tenancy.

23. He advised that he had been on sick leave due to the housing association taking the eviction action; seeing their letters made him scared to go home; being homeless also affected him; and all had an adverse effect on his mental health. He had had a good job, then he had to couch surf and then go into a homeless place where he witnessed a lot of anti-social behaviour. He was not used to this. It had affected him. He was concerned that he did not want to expose his daughter to this kind of lifestyle.

24. He advised that he has a daughter who is 7 years old, and she is going through a difficult time. She has separation and social anxiety issues. If he had to relocate he was worried that his daughter would have a hard time adapting. It would be very difficult for her to adjust, and it would be stressful for her. In terms of contact with his daughter he advised that she used to stay over but he sees her sporadically now given her social anxiety issues. He had last seen her 3-4 weeks ago.

25. In his current employment he had not received any wages but would be paid shortly. He offered to pay £120 from these wages.

26. He advised that he accepted that rent arrears were due. He wanted to repay them. He was asked about why he had stopped paying the £120 and why not continue making smaller payments. He advised that he had no money to do so. He was only receiving £96 per week, and he had other bills to pay including his daughter's maintenance which was deducted as a wages arrestment of around £140 per week. He did not seek any advice about any benefits. He also did not speak to the applicant or CAB about the fact that he had stopping making those payments. He advised he was not sure what there was to say to anyone.

27. He advised that he also had a gambling addiction, and this had affected his ability to pay the rent. He said that the gambling addiction had started in the summer of 2020, he was addicted to online gambling. He had managed to address this when he lost his job and he put in place self-exclusion restrictions online.

28. In January 2021 he also had the cost of living in Reading where he was working and staying in hotels.

29. He advised that he had not sought legal advice in relation to the payment order or the eviction action until recently, he could not explain why he had not sought advice. He advised that he had found out that he could return to the property after he had sought advice from the homeless team. He advised that he had not sought to secure another property in January 2021 after he had handed in the keys, he advised that this was because he had been lodging in a hotel in England where he was working, and he had been there for a few weeks. When he came back he had put his name down on the housing list, and he had ended up homeless. He advised that he did not look for private rented accommodation.
30. He advised that his current health has picked up significantly. He advised that he is pretty certain that he has secured the job in Sweden, where he would earn around £1200 per week and would propose to repay rent and arrears at about £1700-£2500 per month.
31. The respondent's mother also gave evidence. She advised that she was aware of the rent arrears and that respondent had been asked to leave the property. She also knew he was in homeless accommodation and sleeping on friends' sofas. She advised that he had been off work with stress. That he had been stressed and that he had made a few wrong choices with his finances. He had been stressed out and had felt isolated working from home and with the effects of the covid pandemic. She also confirmed that her granddaughter had been having difficulties with social phobia; she had not been at friends' parties and was crying about going to school. Before covid she had been more outgoing but now doesn't want to get involved. Her mum and teacher were working with her. She does not really like change. She thought that it would be stressful for her granddaughter if the respondent had to move home. The house was in a good location as it had a lovely swing park next to it. The park next to him is quiet and noise is a big deal for her. She would need a lot of help adjusting. She would hope that if the respondent was rehoused it would be to somewhere quiet. She confirmed that her granddaughter came to her house regularly, except for the last few weeks. She confirmed that the respondent could see his daughter at her house if he had to move out. She advised that she lived close to where the respondent's property was situated.
32. Mrs Sanderson confirmed that the offer to repay the arrears made at the hearing did not alter the order that the applicant was seeking. This was due to the length of time that this has matter has been going on for; and given that they have tried to engage with the respondent, and it had not been successful. She confirmed that they were

seeking an order for eviction on the grounds of rent arrears. The respondent had been living in the house rent free for a long period of time and this was not acceptable to the landlord. He was entitled to put forward a proposal for repayment, however they were still seeking possession of the property.

33. The agent for the respondent directed the tribunal to consider the written note on behalf of the respondent as her submission. She sought to highlight that the respondent's financial position had been chaotic, he had lost his job, suffered ill health, had a gambling addiction and had debts which had snowballed since early 2020. The respondent had given evidence that he had a new job which would generate a substantial income, earning around £1390 gross per week. She noted that he had stated that he would pay £1750-£2500 a month to address the arrears, and if so he could have them paid in less than 5 months. With that in mind and taking into account the financial situation including his gambling, she moved to reject the applicant's application on the basis that it would not be reasonable to grant the order.

Findings in Fact

34. The Tribunal found the following facts established: -
- a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 24 October 2018.
 - b. Condition 8 entitled "Rent" of the Tenancy Agreement provides that the rent for the property is £475 per month payable in advance.
 - c. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 21 July 2020. It confirmed that proceedings would not be brought until 22 January 2021. It had been served by sheriff officers on 21 July 2020. The grounds in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
 - d. That there appears to have been rent arrears for a period of at least 3 months on the date when the notice to leave was served.

- e. That rent arrears were now in excess of £9,000. The rent arrears were £3,035 when the notice to leave was served.
- f. There are rent arrears outstanding at today's date totalling at least one month's rental due under the tenancy.
- g. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.
- h. That the respondent had had periods of employment during the time he has tenancy and since January 2020. That until at least January 2020 it appeared that he had earned sufficient income to meet his rental payments.
- i. That from January 2020 until October 2021 the respondent had had periods when he had worked and periods when he was not employed.
- j. That the respondent had been signed off from his work from around April 2021 due to stress.
- k. That the respondent had re-commenced employment sometime in September 2021.
- l. That the respondent had failed to adhere to a repayment arrangement made in July 2021.
- m. That the respondent had a daughter and he had sporadic contact with his daughter.
- n. That the applicant had attempted to contact the respondent on a number of occasions regarding the respondent's rent arrears. Copies of letters and emails were submitted in support of their attempts to contact and engage with the respondent.

Reasons for Decision

35. 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. The ground which the Applicant seeks eviction under is ground 12 rent arrears. In terms of ground 12 it states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months; and that the Tribunal may find that the ground named in 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.
36. The tribunal considers that it would be reasonable to grant an order for eviction in this case. In assessing the evidence before us we would confirm that we found Ms Sanderson and Mrs McPhee reliable and credible in their evidence. In the main we found Mr McPhee credible and reliable, however he was unable to provide much detail on a number of matters or to explain his actions when asked to do so.
37. In coming to our decision we consider that the rent arrears are at a substantial level, totalling nearly £10,000. We heard that there was already an order for payment granted in relation to some of the rent arrears. We did not see any evidence of any real effort on the respondent to address the rent arrears since they started to accrue and even at this stage he had not given any thought to the repayment of the rent arrears.
38. We heard evidence of the attempts that the applicant had made to try and get the respondent to pay rent and arrears. A number of copies of emails and letters addressed to the respondent advising him to address his rent arrears were submitted as evidence. These letters suggested that he should contact the landlords to discuss payment of the rent arrears. They also provided advice about what he could do for example by applying for universal credit and seeking advice from Shelter or CAB. A number of letters confirmed that the landlord would seek legal action to recover the property. While some of the correspondence to the respondent could have been clearer, we considered it was nonetheless clear enough and the respondent would have been under no illusion that he had rent arrears, that he had to address them, how he could address them and what would happen if he did not do so.
39. While we note that the respondent had experienced a period of stress related ill health which he considered related to his housing situation, his ill-health only covered a short period of when the rent arrears were accruing. He was not suffering for ill health for

much of the time when he was not paying his rent and he would have known about the rent arrears and the landlord's intention to seek recovery of the property from at least July 2020. It also appeared that his health had improved at the date of this hearing.

40. We note that he had lost employment during a period when the arrears were accruing, but again this did not explain the rest of the time during which he had not paid rent. We consider that he could also have sought universal credit to assist him in making rent payments during those periods but there was no evidence that he had done so. There appeared to be periods when he could have paid rent but did not do so, for example, in January - April 2021. It was not clear when he was working in 2020 but he did appear to be in work for a number of months during that year. By his own admission when he was working he could earn as much as £5000 a month yet he failed to make any payments to his rent from December 2019, until the July 2021.
41. We note that respondent submitted that he has had a gambling addiction, we have placed little weight on this factor, as the productions lodged to support this proposition do not show what happened to all of his other income during the period when he states he was addicted to gambling. We have no evidence as to what his earnings were over this period and what he did with the rest of his earnings. Further any addiction appears to have been time limited and not during the whole period of the rent arrears accruing.
42. We note that the respondent has a daughter and he has contact with her. While we are prepared to accept that the child may have social anxiety and not manage change well, we do note that the respondent is able to meet her out with the property with the child's mother and could also spend time with daughter at his own mother's house. We did not believe that this factor was therefore sufficiently serious to provide a basis to refuse the order.
43. While we did accept that the respondent had been chaotic with his finances and may have experienced a period of stress related ill-health, we also noted that he has been able to hold down skilled employment during much of that period when the rent arrears were accruing. We considered that he had provided no reasonable explanation for the non-payment of rent and arrears for much of the time when they were accruing. He did not appear to have prioritised his rent and the arrears. His failure to prioritise his rent appeared to be ongoing as when he had defaulted on the recent offer to repay arrears at £120 per week, he had failed to contact the applicant or the CAB to discuss the

matter. While he was now offering to make substantial repayments to the arrears, having regard to his payment history we considered that there was no certainty that these payments would be made.

44. We did not consider that the issues affecting the respondent when balanced against the significant level of arrears and length of time that the arrears had existed for outweighed the reasons for granting the order. It appeared to us therefore that it would be reasonable to grant an order for eviction. We find that ground 12 is met and grant an eviction order in terms of ground 12.

Decision

45. 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

Legal Member/Chair

18 October 2021

Date