



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/23/0180

Re: Property at 29 Hillside Crescent, Gorebridge, EH23 4HP (“the Property”)

Parties:

Mr Andrew Wesley, 27 Union Park, Bonnyrigg, EH19 3DF (“the Applicant”)

Ms Andrea Frost, Anabel Frost, 29 Hillside Crescent, Gorebridge, EH23 4HP (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to 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 had been 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: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) tenancy agreement
- (5) evidence of pre-action protocol
- (6) rent statement
- (7) emails from the applicant to the respondent
- (8) emails from and to the applicant and the council's benefits section
- (9) emails from and to the applicant and the council's environmental health service

3. This application was continued from a first case management discussion which took place on 16 June 2023. Reference is made to the terms of the Note and Direction issued at that case management discussion. For the purposes of this decision it is noted that the tribunal on 16 June 2023 allowed the application to be amended to Ground 12. The papers were re-served by sheriff officers on the respondents. The respondents were also directed to provide written representations on the application; and the applicant was direction to provide an up todate rent statement.

4. The case management discussion was continued until 25 July 2023.

5. The applicant appeared at the second case management discussion on 25 July 2023. The applicant had submitted an updated rent statement and a copy of a pre-action protocol letter which he had emailed to the respondents on 26 June 2023.

6. Neither respondent appeared at the case management discussion. The first Respondent had emailed the tribunal with the assistance of an advocate from CAPS Independent Advocacy at 16.27 on 24 July 2023. The email advised that she was suffering from poor mental health; that her daughter also has poor

mental health and other medical conditions; and her son has additional caring needs. The first respondent indicated that she had been in contact with Midlothian Council regarding her benefits and they were processing her claim. The delay in payment of benefits was the fault of the council. The first respondent was frustrated by the council's lack of action. The first respondent advised that she would not be attending the tribunal due to her mental health and as she can struggle to process information and feel overwhelmed; she does not have any legal representation.

7. The tribunal were prepared to proceed with the case management discussion in the absence of the respondents.

Discussion

8. The applicant advised that he was seeking an order for recovery of the possession of the property under the ground 12 (rent arrears).
9. The rent arrears now totalled £6,102.75.
10. He advised that he had seen the email from the first respondent, there was nothing in it that changed his decision to seek an order for eviction.
11. He noted that the first respondent appeared to now have support from a charity who might be able to assist her in getting her benefits sorted out, but he considered that it also might not make any difference, as this had been his experience in the past with the first respondent.
12. He asked if the tribunal had had any evidence of her claim that she suffered from poor mental health. He noted that he had to produce evidence to support his claim and he queried if there was any evidence before the tribunal to support what the first respondent had said.

13. He advised that he had spoken to her a year ago, before she stopped speaking and communicating with him, and he had offered to help her sort out her benefits. It had not been successful. He advised that if the charity were able to assist her in sorting out her benefits and organising repayment of the arrears then he could look at not enforcing the decree for eviction.
14. The applicant was asked about his views that there had been an application for housing benefit made, and it was the council who were delaying the matter. He advised that his experience was that the council will send a letter seeking any missing information to an applicant, if they do not respond in a certain time period the council will close that claim. He thought that something like that would have happened in this case, i.e. the respondent would not respond to the further information requests. He did not think any delay was the fault of the council.
15. He believed that the council will only backdate a claim for 3 months, although there may be discretion where the applicant has had mental health issues. He had no information about how the respondents intended to deal with the rent arrears.
16. In terms of the family circumstances, he understood that the daughter (second respondent) had epilepsy, but that it was managed by medication. He also understood that she had some other seizures which may affect her. However he saw her taking her little brother to school every day and so she was able to carry out that daily task. He was not sure what, if any, conditions affected the first respondent's son, however he advised that he saw the little boy out and about on his bike and he appeared just like any other ordinary child.
17. He advised that the second respondent also does not contact him to discuss the rent and arrears. He suspects that she leaves it for the first respondent, her mother, to sort out.

18. The applicant advised that if the order is not granted it will have an impact on his finances, he advised that this property is subject to a mortgage and his mortgage costs exceed what portion of the rent he is receiving for the property, he receives £550 in rent and the mortgage is £650. In addition, he has submitted further information about the anti-social behaviour of the tenants and he considered that this was another aspect which made it reasonable to grant the order for eviction.
19. The tribunal noted the terms of the pre-action protocol letter and other emails sent to the respondents about the arrears. There appeared to have been very little response to those letters and no change in the non-payment of rent. We note that there was also correspondence from the Environmental Health Service about complaints they had received from neighbours about the respondents leaving bags of rubbish outside of their property.

Findings in Fact

20. The Tribunal found the following facts established: -
21. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 March 2022.
22. The tenants were Andrea Janine Frost and Annabell Frost.
23. The landlord was Andrew Wesley.
24. The property was 29 Hillside Crescent South, Gorebridge, EH23 4HP.
25. Clause 7 of the tenancy stated that rent was £1100 a calendar month payable in advance.
26. There was submitted a notice to leave dated 2 December 2022, stating that an application would not be made until 2 January 2023. It sought eviction under ground 12 rent arrears. It set out that the respondents had been consistently

behind in their rent. It noted that there had been no proof provided by the respondents of any financial issues.

27. When the notice to leave was served the arrears totalled £3,352.75.

28. The notice to leave had been emailed to the tenants. There was evidence of service.

29. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

30. At 25 July 2023 rent arrears were £6,102.75.

31. There was a rent statement submitted on 5 July 2023 showing the rent arrears outstanding of £6,102.75.

32. There was evidence that the pre-action protocol requirements had been followed.

33. There was no evidence of failure or delay in any benefit payment to the respondent.

34. The respondents had failed to pay part of the monthly rent due since 7 March 2022.

35. There was no evidence of the first respondent's claim for benefits.

36. There was no evidence provided by the respondent's about their medical conditions.

37. There was evidence of complaints from the Environmental Health Service in around December 2022 advising the applicant that there appears to be an ongoing issue about the amount of rubbish/black bins in the garden of the property.

Reasons for Decision

38. 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 found that one of the grounds in schedule 3 of the Act applies.

39. The ground which the Applicant seeks eviction under is ground 12. It is in the following terms :-

12 Rent arrears

(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 [—] 3 [

(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.] 3

(5) For the purposes of this paragraph— ...

40. The applicant appeared. The respondents did not appear. The applicant confirmed he sought an order for eviction based on the fact that the respondents had been in rent arrears for three or more consecutive months. When the notice to leave was served in December 2022 the respondents had been in rent arrears for well over three months. The rent statement showed that there had been rent arrears on the rent account since at least March 2022. It appeared that the first part of the ground 12 was met.
41. Given the first part of the ground is met the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order.
42. We find it would be reasonable to grant the order for eviction, in coming to this conclusion we took into account the following matters:-
43. That the arrears were now in excess of £6,000. Arrears had been accruing since at least March 2022.
44. There was evidence of the landlord attempting to contact the first respondent on a number of occasions to sort the issue of rent out; this was even mentioned in the notice to leave that he would be happy to work with the respondents to resolve problems. There appeared to be no effort on the part of either respondent to deal with the rent and arrears, although we note that the second respondent was receiving housing benefit. We note that the applicant advised that he had offered to assist the first respondent in sorting out her benefit claim. We note that the first respondent had stopped communicating altogether with the applicant. The applicant's attempts to support the first respondent had not been successful. We place weight on the applicant's attempts to engage with the respondents to resolve this matter.
45. We place weight on the fact that the applicant advised that the mortgage for the property was £650 per month and he only received £550 in rent; the rent paid

does not cover his mortgage costs. We place weight on the financial burden the tenancy was having on the applicant and the efforts he had made to sort out the tenants' benefit claim.

46. We note that the first respondent and second respondent may have poor mental health; and the male child in the property may also have additional care needs; however, before the tribunal there is no evidence to support these claims.

47. This case called for the second time and we consider that one of the respondents should have been able to attend or engage someone to attend for them and provide evidence of their position. The only contact from the first respondent was at 4.30pm the day before the second case management discussion.

48. We do not have any documentary evidence about any claim that the first respondent for benefits to pay her rent and we have no knowledge of where any claim may be in its assessment. We consider that she has had over a year to resolve this issue and has failed to do so. The lack of any evidence of effort on her part and inaction by the council leads us to make no finding that any failure to pay a benefit was the fault of the council or other benefit agency.

49. The landlord advised that there was also an issue with anti-social behaviour in the form of leaving bags of rubbish in the garden of the property. We note that the email from Environmental Health referred to this being an ongoing problem and them receiving complaints from neighbours. We consider that this is a relevant matter to consider and place weight on relation to assessing the question of reasonableness.

50. The tribunal accepts that the respondents may be vulnerable due to their mental health, and this may have led to the rent arrears accruing, however there is no evidence before the tribunal to support the matters mentioned in the first respondent's email of 24 July 2023. Against that the applicant appears to have

written and tried to work with the respondents to sort out the rent payments and arrears; there are complaints of anti-social behaviour from neighbours; the rent arrears are now over £6,000 and the landlord has a monthly shortfall to meet his mortgage payments for this property; there is no evidence that the benefits issues will be resolved or the arrears will be repaid; and so balancing all of these factors, we consider that it would be reasonable to grant an order for eviction.

51. Accordingly, considering the papers before us and the oral submission by the applicant, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 was met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

52. 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

Date: 25/07/2023

