



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/22/3041

Re: Property at Flat 30 Chesterfield Court, 12 Dorchester Place, Glasgow, G12 0BW (“the Property”)

Parties:

Ms Montague Ashley-Craig, Flat 2, 171-173 Mare Street, London, E8 3RH (“the Applicant”)

Mr Matthew Dent, Ms Yanisa Dent, Flat 30 Chesterfield Court, 12 Dorchester Place, Glasgow, G12 0BW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent

Background

- 1 By application to the Tribunal dated 6 December 2021 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 dated 1, 2 and 3 December 2018;
 - (ii) Notice to Leave dated 25 May 2021 stating that proceedings for possession will commence no earlier than 28 November 2021 and citing ground 12, together with proof of service by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council;
 - (iv) Rent Statement;
 - (v) Email to Respondents from the Applicant's Representative dated 25 May 2021 with tenancy check out procedures and Notice to Leave; and
 - (vi) Copy letters from the Applicant's Representative to the Respondents regarding the pre-action requirements.
- 2 By Notice of Acceptance of Application dated 29 April 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 13 July 2022 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 Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 13 July 2022. The Applicant, Ms Ashley-Craig, was present. Mr Dent was present on behalf of both Respondents.
- 4 The Legal Member explained the purpose of the Case Management Discussion and asked both parties to address the Tribunal on their respective positions.
- 5 Ms Ashley-Craig advised that she had entered into a private residential tenancy agreement with the Respondents in October 2018. The rent was £775 per month, payable on the third of the month. The Respondents had continually been in arrears over the course of the tenancy. Ms Ashley-Craig made reference to a previous application she had made to the Tribunal for payment of outstanding rent arrears under reference FTS/HPC/CV/21/0978. The Respondents had been ordered to make regular payments to clear the arrears. However they had not kept up their payments and she had no choice but to apply for an eviction order. Ms Ashley-Craig confirmed that the arrears currently stood at £2014, just over two and a half months rent.
- 6 In response to questions from the Tribunal Ms Ashley-Craig confirmed that the arrears had stood at £162.43 when she submitted the application, however they had increased due to a lack of payments by the Respondents. The Respondents had since made two payments to the rent account, £937.43 on 29 April 2022 and £775 on 26th May 2022. Even if the balance was paid, Ms Ashley-Craig advised that she would still wish to seek eviction given the history of the tenancy. The Respondents had repeatedly made promises of payments and had been sent emails by her letting agent which they had not replied to. Ms

Ashley-Craig understood that Mr Dent was in an adequately paid job therefore she did not understand why the rent was not paid. She didn't know how the tenancy could continue. Ms Ashley-Craig explained that it was hard for her to manage her own finances as a result of lack of consistent payments and it was causing significant stress. She was paying the mortgage and paying for repairs to the property without a steady stream of income.

- 7 Mr Dent explained that he understood the position put forward by Ms Ashley-Craig. He had taken the property on whilst waiting for his family to join him from another country. They had arrived in August of last year and were still in the property. He agreed the rent arrears were due, albeit he stated he had been in communication with the letting agent. He had been due to come into some money as part of an inheritance however he was waiting for the probate process to conclude. He expected to receive funds after the 22nd July 2022 and would be in a position to clear the arrears balance at that point.
- 8 Mr Dent advised that he and his wife were actively looking for somewhere else to live. They had been given the opportunity to purchase a property but given the delay in the aforementioned probate this had not been possible. They had been to see rental properties but the market was moving quickly and they needed to look around for the right property. Mr Dent agreed that the rental balance had reduced to £163 at the start of the year and was now back up at over £2000. He advised that the Respondents had to pay some outstanding debts after miscalculating their finances. He confirmed that the Respondents would pay the sums due and ensure they vacated the property as soon as possible.
- 9 In response to questions from the Tribunal Mr Dent confirmed that he resided in the property with his wife and their three children aged 6, 4 and 3. He was in employment, but his wife was not.

Relevant Legislation

- 10 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 sub-paragraph (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.

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

Findings in Fact and Law

- 12 The parties entered into a Private Residential Tenancy Agreement dated 1, 2 and 3 October 2018.
- 13 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 25 May 2021 the Applicant delivered a Notice to Leave to the Respondents by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 28 November 2021.
- 15 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £775 per calendar month.
- 17 As at the date of service of the Notice to Leave arrears in the sum of £1775.07 were outstanding.
- 18 As at the date of the Case Management Discussion arrears in the sum of £2014 were outstanding.
- 19 The Applicant has complied with the pre-action requirements to a reasonable extent by advising the Respondents of their rental obligations and the outstanding arrears, directing them to advice agencies and making attempts at contact.
- 20 The Applicant obtained a payment order from the Tribunal under case reference FTS/HPC/CV/21/0978 for rent arrears in the sum of £2550.07 on 9 June 2021 with a time to pay direction.

- 21 The Respondents have continued to default on their rental obligations.
- 22 The Respondents reside in the property with three children aged 3, 4 and 6.
- 23 The Respondents are actively seeking alternative accommodation and wish to remove from the property as soon as possible.
- 24 The Respondents will make payment of the outstanding arrears following receipt of sums due at the end of July.
- 25 It is reasonable to make the order sought by the Applicant.
- 26 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 27 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved and the substantive facts were agreed between the parties.
- 28 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 required notice had been given to the Respondent and therefore that application could be entertained.
- 29 The Tribunal accepted that there were rent arrears outstanding in the sum of £2014 and that the sum had increased from £163 when the application was submitted in January 2022. The Respondents did not dispute the Applicant's outline of the rental history and accepted the position regarding the rent arrears. On that basis the Tribunal was satisfied that the rent account had been in arrears for three or more consecutive months.
- 30 The Tribunal then considered the question of reasonableness. The Respondents' payments to the rent account had been erratic, resulting in uncertainty for the Applicant. She had clearly tried to address the matter by seeking a payment order from the Tribunal in advance of seeking repossession. Whilst that had had the effect of reducing the rent arrears in the short term, they had since begun to increase once again as a result of the lack of payments by the Respondents. The Tribunal accepted that this would have been a cause of stress to the Applicant, given her continuing obligations in respect of the mortgage and repairs costs. It was understandable that she would have little confidence in the Respondents' ability to maintain payments in line with the terms of the tenancy agreement.

- 31 The Tribunal also took cognisance of the fact that the Respondents were actively seeking to move from the property and had already started looking for alternative accommodation. Whilst the Tribunal did have some concerns over the young children in the property, it was clear that the Respondents had no desire to continue with the tenancy based on Mr Dent's submissions at the Case Management Discussion.
- 32 Having regard to the particular facts and circumstances of this case, the Tribunal ultimately concluded it would be reasonable to grant the eviction order sought. The ongoing prejudice to the Applicant in terms of the lack of regular payments and the stress arising as a result outweighed any prejudice to the Respondents who were seeking to move in any event.
- 33 The Tribunal did however note Mr Dent's comments regarding the challenges posed by the current rental market in terms of sourcing alternative accommodation, as well as his offer to repay the arrears once in receipt of funds. On that basis the Tribunal determined it would be reasonable to suspend the extract of the order by a period of ten weeks to give the Respondents sufficient time to bring the rent account up to date and move to other accommodation. For the avoidance of doubt the Respondents should also continue to make regular payments of the rent due until such time as the tenancy has come to an end.
- 34 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.

R. O

13 July 2022

Legal Member/Chair

Date

