



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/0947

Re: Property at F 14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Property”)

Parties:

Ftp (angus) Ltd, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ (“the Applicant”)

Miss Cerys Collier, F 14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of Ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 in that the Applicant has been in rent arrears for a period of over three consecutive months and on account of that fact it is reasonable to grant the order.

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal Rules of procedure was first lodged with the Tribunal on 31st March 2022 along with a related payment order application with reference HPC/CV/22/0949 and both applications were accepted by the Tribunal on 11th May 2022. A case management discussion was set down for 20th July 2022 at 2pm for both applications.

Case Management Discussions

2.At the case management discussion on 20th July the Applicant did not attend but was represented by Mr Lawson solicitor of MML Legal. The Respondent did not attend

and was not represented. The applications had both been served on the Respondent by Sheriff officer putting these through the letterbox at the property on 7th June 2022. Mr Lawson moved to proceed in the absence of the Respondent and the tribunal agreed to this request given that the papers had been lawfully served on the Respondent and fair notice appeared to have been given to her in terms of the Tribunal rules of procedure.

3. The Tribunal had sight of both applications for eviction and the related payment order application, a tenancy agreement, a Notice to Leave, proof of delivery of the Notice to Leave, a tenancy statement, ledger entries in relation to rent payments, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating that notice to the local authority, emails and letters between Letting Agents and the Respondent and letters in terms of the pre action protocol requirements.

4. Mr Lawson requested an eviction order and he submitted that it was reasonable to grant the order. He pointed to the fact that the Respondent had been given ample opportunity but had not engaged regarding the rent arrears. The tenancy had commenced on 3rd September 2020 and the monthly rent was £450. Mr Lawson understood that only three payments of rent had been made since July 2021. He understood a payment had been made in August 2021, February 2022 and on 5th May 2022 a payment of £1500 had been made. The rent arrears as of 20th July 2022 stood at £3249.94.

5. The Tribunal had sight of emails to the Respondent regarding outstanding rent and letters sent to her. Some email contact had been made by the Respondent in 2021 on the question of rent payments and in August 2021 she had emailed letting agents indicating that her money had been split and that the rent for that month would come in two payments. Nothing in the emails appeared to set out proposals for payment of rent arrears and in November and December 2021 agents acting on behalf of the Applicant wrote to her enclosing information as to where she could receive support and setting out her rights as regards eviction.

6. Mr Lawson did not have much information regarding the Respondent's financial circumstances but said that he understood that the Respondent was believed still to reside at the property alone, but it was not known if she worked or was in receipt of benefits. There had not been much contact between the landlord and the Respondent. When inspections had been carried out at the property the Respondent was not usually present. There had been an attempt at contact a few weeks before the case management discussion but again the Respondent had not been present at the property at that time.

7. The Tribunal raised matters regarding the level of arrears said to be due. The tenancy rent statement lodged was unclear in its terms and referred to sums which included pounds and pence when the rent was £450 per month. It was not clear what the level of rent arrears was as of July 2021, as of the date of service of the Notice to Leave in September 2021, as at the date of the application and the date of the case management discussion on 20th July 2022. An adjournment was granted and Mr Lawson was able to clarify why some payment entries were in pounds and pence and this appeared to be due to the system used by the Letting Agents which split sums paid towards rent arrears between different rental months as appropriate. The total amount of rent arrears at the dates of the service of the Notice to Leave, July and

September 2021, the date of the application and the date of the case management discussion was still unclear, and the Tribunal decided that it was appropriate to continue the case management discussion to a later date to clarify these matters and to clarify which rent statement was served along with the Notice to Leave.

8. The case management discussion was continued until 7th October 2022 at 10am. On that date Mr Lawson again appeared for the Applicant together with an observer whose details were given to the Tribunal. There was no appearance by or on behalf of the Respondent and the Tribunal was aware that she had been sent an email advising of the date of the case management discussion. Mr Lawson submitted that the Tribunal should again proceed in her absence and the Tribunal agreed to this request given that the Respondent again appeared to have received fair notice of the date and time of the case management discussion.

9. Since the case management discussion on 20th July 2022 Mr Lawson had lodged further written representations regarding the rent by email dated 11th August 2022. He had also lodged a request to increase the sum being sought by way of a payment order to £3250 and the representations and the request to amend the sum being requested had been sent to the Respondent by the Tribunal on 15th August 2022.

10. The Tribunal considered whether to allow the sum requested in the payment order application to be increased. The terms of Rule 14A of the Tribunal rules of procedure had not been complied with in its entirety as the Applicant's representative had not intimated the request to the Respondent but the request had been intimated by the Tribunal. The Tribunal considered the terms of Rule 14A(2) and took the view that the amendment of the sum requested could be permitted as this section gave the Tribunal some discretion and timeous notice of the request to change the sum being requested had been given to the Respondent, albeit by the Tribunal.

11. At the case management discussion on 7th October 2022 Mr Lawson confirmed that as of the date of the Notice to Leave the rent arrears were £1150 and he had produced the rent statement sent with the Notice to the Applicant. The sum of £250 had been paid towards rent arrears in September 2021 but the Letting Agents system had not updated to show that payment in the rent statement sent with the Notice to Leave. It showed arrears of £1400 at that time. No rent payments had been made in July 2021 and no rent payments had been made since the first case management discussion in July 2022. The rent arrears being sought amounted to £3250.

12. Mr Lawson gave additional information to the Tribunal regarding the Respondent and her circumstances. He had spoken with the Applicant and now understood that the Respondent's income derived from benefit, but any rent payments paid were paid by the Respondent. No rent had been received directly from the benefits agency by the Applicant. It was now understood that the Applicant did not live alone at the property but has a young child between the ages of 1 and 2 although it was not known if the child lives at the property all of the time. Mr Lawson indicated that the Respondent was believed still to reside at the property and she had not corresponded with the Applicant nor had she returned keys. Mr Lawson submitted that it was reasonable to grant an eviction order given the level of rent arrears and pointed out that although the rent statement sent with the Notice to Leave did not take account of a payment made early in September 2021, the arrears at that time were £1150 and

given that the monthly rent was £450 the eviction ground was made out at that time given that rent arrears had accrued for three or more consecutive months.

13.The Tribunal members considered that they had sufficient information to allow a decision to be made and that the proceedings had been fair.

Findings in Fact

14.The Applicant and respondent entered into a private residential tenancy agreement at the property with effect from 3rd September 2020.

15. The monthly rent payable in terms of the tenancy is £450.

16.Rent arrears started to accrue early in the tenancy and in September 2021 when a Notice to Leave was served the arrears stood at £1150.

17.As at the date of the Notice to Leave and its date of service the Respondent was in rent arrears for a period of more than three consecutive months.

18.Agents for the Applicant contacted the Respondent by email regarding arrears over a number of months and no proposals for payment of the outstanding arrears were received.

19.A Notice to Leave in proper form was sent to the Respondent on 6th September 2021 indicating that eviction was being sought due to rent arrears over three consecutive months.

20.A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was served on the local authority in relation to this application.

21.Letters in terms of the Rent Arrears pre-Action Requirements(Coronavirus) (Scotland) Regulations were sent to the Respondent on behalf of the Applicant.

22.Rent arrears continue to accrue, and no recent payments have been made.

23.The rent arrears accrued as of August 2022 are £3250.00.

Reasons for Decision

24.The Tribunal granted the eviction order as the statutory requirements were met in this application and in the circumstances of the application it appeared reasonable to grant the order. The Respondent has been in rent arrears for many months over the tenancy and had made no proposals to deal with the rent arrears. A Notice to Leave in proper form was properly served on the Respondent and she remains in occupation at the property. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the relevant council in this application and the Applicant had complied with the pre action protocol requirements and had sent two letters to the Respondent setting out her rights and sources of assistance.

The Tribunal considered all the circumstances and considered that it was reasonable to grant an eviction order. The circumstances presented to the Tribunal amounted to a prima facie case for an eviction order and the Respondent had not appeared to suggest that it would not be reasonable to grant an order.

In all the circumstances the Tribunal considered it was reasonable to grant the order.

Decision

The Tribunal determined that an eviction order be made in terms of Ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 in that the Applicant has been in rent arrears for a period of over three consecutive months and on account of that fact it is reasonable to grant the order.

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.

7.10.22

Legal Member/Chair

Date