

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/2789

Re: Property at 2-1 37 Oakfield Avenue, Glasgow, G12 8LL (“the Property”)

Parties:

Mr Craig Ambrose, 5 Preston House Gardens, Linlithgow, EH49 6PZ (“the Applicant”)

Mr Jack Boyle, 2-1 37 Oakfield Avenue, Glasgow, G12 8LL (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be granted and that an eviction order be granted.

Background

1. On 9th August 2022, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 7th September 2022, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by audio conference on 7th December 2022.

The case management discussion

4. Ms Sharon Cooke and Ms Katrina O’Neill of Coda Estates Ltd represented the Applicant.

5. The Respondent was not present and the tribunal noted that the arrangements for the case management discussion had been intimated to the Respondent by Sheriff Officer on 28th October 2022.

6. The Legal Member explained the purpose of a case management discussion. Ms Cooke invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 12, Part 3 of Schedule 3 of the 2016 Act have been met.

7. Findings in Fact

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 24th February 2022.
- (ii) The tenancy commenced on 25th February 2022.
- (iii) The monthly rent due under the private residential tenancy is £575.
- (iv) The rent arrears due as at 9th August 2022 were £2,775.
- (v) The rent arrears due as at 26th October 2022 were £4,500.

8. Finding in Fact and Law

The Respondent is in rent arrears for three or more consecutive months as at the date of the case management discussion.

9. Documents before Tribunal

- (i) Private residential tenancy agreement dated 24th February 2022.
- (ii) Copy Notice to Leave dated 6th July 2022.
- (iii) Copy Section 11 intimation to local authority.
- (iv) Letter from Applicant's agents to Respondent dated 21st June 2022 in which he is advised of agencies which might assist tenants requiring support or advice with regard to difficulties in paying rent.
- (v) Rent statements.

10. The Law

Section 51 of the 2016 Act:

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 or must 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.

Ground 12, Part 3 of Schedule 3 of the 2016 Act

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Schedule 1 of the Coronavirus (Scotland) Act 2020 as continued by the Coronavirus (Extension and Expiry) (Scotland) Act 2021

1 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 51 (2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3) Schedule 3 (eviction grounds) has effect as if—

(h) in paragraph 10 (2) (not occupying let property)—

(i) in the opening words, for the word "must" there were substituted "may",

(ii) after paragraph (a), the word "and" were repealed,

(iii) after paragraph (b) there were inserted ", and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

Oral Evidence

11. Ms Cooke said that her company had made efforts to get the Respondent to engage in relation to the arrears of rent but that he had not responded. She said that he had been offered a "pay up plan" in respect of arrears but had not taken up that offer.

12. Ms Cooke referred to the letter which had been sent to the Respondent on 21st June 2022 which signposted him to advice agencies which might assist him,

13. Ms Cooke said that, as far as she was aware, there was no issue for the Respondent with regard to applications for state benefits which had not been

processed and that, as far as she was aware, the Respondent is not in any kind of vulnerable category.

14. Ms Cooke said that the Respondent had paid no rent since the commencement of the tenancy and that the current rent arrears were £5,075. She said that the Applicant has a number of buy to let properties. She said that the rent charged for the Property included electricity charges and that, as a consequence, the Applicant was not only sustaining a loss of income from rent but was also paying for the Respondent's consumption of electricity.

15. Ms Cooke said that the updated rent statement showing arrears of £4,500 had been sent to the Respondent on 25th November 2022.

Reasons for Decision

16. The tribunal saw no reason for determination of the application to be continued to a Hearing. There was more than three months' rent lawfully due.

17. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003 and that the Applicant had followed the requirements of the Rent- Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

18. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.

19. The Respondent had not engaged with the Tribunal process and nothing was therefore known about his particular circumstances. It was not reasonable for the Applicant to continue to sustain the Respondent's non payment of rent and he should be able to recover the Property.

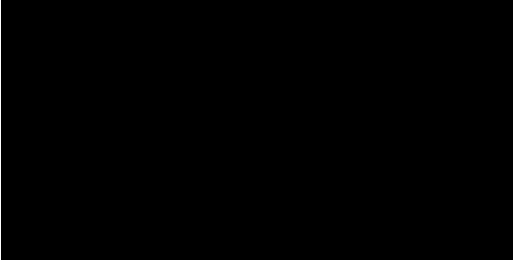
Decision

20. The tribunal determined that the application be granted and that an eviction order be made.

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
7th December 2022