



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/22/4133

Re: Property at 3/2 3 Golspie Street, Govan, Glasgow, G51 3EW (“the Property”)

Parties:

KPM Estates Limited, 23 Park Circus, Glasgow, G3 6AP (“the Applicant”)

Miss Amy Gardner, Miss Eithne O'Neill, 3/2 3 Golspie Street, Govan, Glasgow, G51 3EW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

- 1 By application to the Tribunal 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;
 - (ii) Notice to Leave dated 4 October 2022 stating that proceedings for possession will commence no earlier than 4 November 2022 and citing ground 12, together with proof of service on the Respondent by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council;
 - (iv) Rent Statement; and
 - (v) Copy correspondence from the Applicant's representative to the Respondents in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application 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 15th March 2023 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.
- 3 The Applicant subsequently submitted a request to amend the application to include ground 12A under Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 together with a rent statement confirming arrears exceeding six months rent. The said request was intimated upon the Respondents.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 15 March 2023. The Applicant was represented by Mr John Jarvie, Solicitor. The Respondents were not in attendance. The Tribunal noted they had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in their absence.
- 5 Mr Jarvie confirmed that the Applicant sought an eviction order under ground 12A. When the Notice to Leave was initially served the Respondents were in arrears of more than three consecutive months. The arrears had since increased to in excess of six months therefore the Applicant was seeking to amend the application to include ground 12A. Mr Jarvie referred to the rent statement produced with the request for amendment. The arrears were £4295. In terms of reasonableness Mr Jarvie confirmed that the Applicant was suffering financial hardship as a resulting of the lack of rent payments. It was believed that the Respondents had in fact ceased to occupy the property, but had failed to notify the Applicant and had failed to return the keys. In order to obtain some certainty the Applicant sought an eviction order to secure the property. Mr Jarvie advised that correspondence from the Respondents had been sparse therefore not much was known about their circumstances. It was understood that one of the Respondents had vacated the property in July 2022, which corresponded with the cessation of the rent payments. Nothing had been paid since then. It seemed that the remaining tenant had struggled to cover the rent when their employment contract came to an end however no

further detail had been provided to the Applicant. When the tenancy commenced both Respondents were in employment and assured the Applicant that they could cover the monthly rent. However it appeared that the tenancy had become unsustainable for them and as previously noted it appeared that they had in fact vacated the property. In response to questions from the Tribunal Mr Jarvie advised that the Applicant was not aware of any benefits being applied for in respect of the rent. The Respondents were single adults with no children. There was nothing to suggest anyone else was living in the property.

Relevant Legislation

- 6 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 12A

(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

- 7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and the Cost of Living (Tenant Protection) (Scotland) Act 2022 are also relevant to this application.

Findings in Fact and Law

- 8 The parties entered into a Private Residential Tenancy Agreement dated 1 April 2019 which commenced on that date.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 On 27 May 2022 the Applicant delivered a Notice to Leave to the Respondent 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 June 2022.
- 11 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

- 12 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £500 per calendar month.
- 13 As at the date of service of the Notice to Leave arrears in the sum of £1920 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £4295 were outstanding.
- 15 The last payment to the rent account by the Respondents was on 14 July 2022.
- 16 The Applicant has sought to assist the Respondents by offering to enter into payment arrangements, by advising them of the outstanding arrears and by directing them to sources of funding.
- 17 The Applicant is financially prejudiced by the non payment of rent by the Respondents.
- 18 The Respondents are single adults with no dependents.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of ground 12A of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

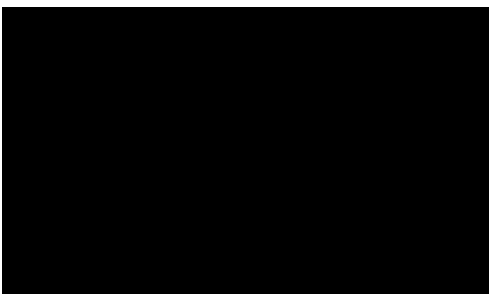
- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondents had been given the opportunity to participate in the proceedings but had chosen not to do so.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants 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 Respondents and therefore that application could be entertained.
- 23 The Tribunal was further satisfied that it would be reasonable to allow amendment of the application to include ground 12A, in light of the fact that arrears had now increased to in excess of six months rent and no payments had been made by the Respondents since July 2022. The Tribunal accepted

that there were rent arrears outstanding in the sum of £4295. The lack of ongoing payments to the rent account had resulted in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12A had been met.

- 24 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from the Applicant's representative at the Case Management Discussion. It was clear that efforts had been made to alert the Respondent to the increasing arrears, and the Tribunal accepted the Applicant's position that it appeared they were no longer residing at the property. The Tribunal further noted that the Respondents were both single with no dependents, and had been directed to advice agencies for support through the Applicant's compliance with the pre-action requirements. There was nothing before the Tribunal to contradict the position put forward by the Applicant, and it was noted that the Applicant was enduring financial hardship as a result of the arrears. The Tribunal therefore considered that the balance weighed in favour of the Applicant in terms of the reasonableness of granting the order.
- 25 Accordingly, having regard to the significant level of arrears, the efforts by the Applicant to assist the Respondents, the ongoing financial impact on the Applicant, and the fact that the Respondents were likely no longer residing at the property the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case to make an eviction order.
- 26 The Tribunal therefore determined to make an order for eviction against the Respondents. 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.



Legal Member/Chair

15 March 2023

Date