



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/22/4370

Re: Property at 118 Merkland Lane, Aberdeen, AB24 5RQ ("the Property")

Parties:

Mrs Angela Knight, Ginsterweg 2E, 40489, Dusseldorf, Germany ("the Applicant")

Mr Jason Glover, 118 Merkland Lane, Aberdeen, AB24 5RQ ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Sandra Brydon (Ordinary Member)

1. Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 16 March 2023, the Applicant was not present but was represented by Ms Rebecca Esson of Raeburn Christie Clark & Wallace LLP, Aberdeen. The Respondent was also present.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/4371.

Prior to the CMD the Tribunal had received an email from Ms Esson for the Applicant with additional inventories of productions.

The Respondent had lodged no written representations.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

2. Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") dated 1 and 2 June 2021 that commenced on 4 June 2021.

- ii. The rent payable in terms of the PRT is £595 per calendar month payable in advance on the 4th day of each month.
- iii. On 31 October 2022, the Applicant's agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 1 December 2022 on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that rent arrears of £2,380 had accrued.
- iv. On 31 October 2022 the Applicant's agent sent to the Respondent by email a letter relative to the pre-action protocol.
- v. On 9 December 2022 the Applicant's agent served on Aberdeen City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

3. The CMD

(a) At the CMD Ms Esson for the Applicant made the following representations in respect of this application and the associated application FTS/HPC/CV/22/4371:-

- i. The current rent arrears balance payable by the Respondent is £4,930. The last payment of rent was £425 on 7 March 2023.
- ii. Ms Esson has been in communication with the Respondent and a Housing Officer at Aberdeen City Council who is assisting the Respondent.
- iii. The Respondent has put forward a proposal for payment of the arrears acceptance of which would be conditional upon an eviction order being granted by the tribunal. The proposal is that the Respondent will pay £595 per month by way of the ongoing monthly rent plus an additional £100 per month towards the arrears, all to be paid on the 4th day of each month.
- iv. The Respondent has completed an income and expenditure form upon which the Applicant's instructions have not yet been received.
- v. Previously, the Applicant had tried to contact the Respondent repeatedly in an attempt to avoid his eviction but he did not engage.
- vi. The Respondent also refused entry for gas safety checks.
- vii. Ms Esson wrote to the Respondent on 29 November 2022 about access to the Property. The Respondent did not respond.
- viii. The pre-action correspondence sent to the Respondent directed him to sources of advice. He failed to respond.
- ix. Ms Esson understood the Respondent had recently gained employment which has allowed him to put a payment proposal which the Applicant is considering but any such arrangement is conditional upon an eviction order being granted. The Applicant would undertake not to enforce the eviction order unless the Respondent defaulted in that payment arrangement.
- x. The Applicant would be unfairly prejudiced if an eviction order was not granted given the costs already incurred in bringing these proceedings.
- xi. The Applicant seeks the tribunal's permission under Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought notwithstanding that Ground 12A was not stated in the Notice to Leave previously served.
- xii. Ms Esson explained that the arrears were 4 months in total at the point the Notice to Leave was served. When the application was lodged it was not clear whether the moratorium on evictions would extend beyond 31 March 2023 but has now been extended to 30 September 2023. Ground 12A was not available to the Applicant when the Notice to Leave was served but given that the arrears

have continued to increase it is reasonable that the tribunal grant permission to include Ground 12A as an additional ground of eviction.

- xiii. The Applicant is suffering financial hardship as a consequence of the rent not being paid. Prior to the most recent payment the arrears amounted to 9 months of rent. She was distressed due to the Respondent not being contactable. She is having difficulties with her mortgage due to the lack of income. She was also in breach of her insurance due to gas safety checks not being carried out.
- xiv. The Property is the Applicant's only leased property.

Ms Esson therefore invited the tribunal:-

- To grant permission under Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought; and
- To grant an eviction order.

(b) At the CMD the Respondent made the following representations:-

- i. He lives in the Property alone.
- ii. On 7 March 2023 he started a new job as a chef at a hotel in Aberdeen. Prior to that he had not been working for a number of months.
- iii. The Respondent is paid fortnightly. His first wage is paid on 17 March 2023.
- iv. His proposal is to pay £595 per month by way of ongoing rent plus an additional £100 per month towards the arrears.
- v. Having paid £425 on 7 March he will pay a further sum of £170 on 17 March 2023, making the total rent of £595 for March 2023.
- vi. Previously he was going through a contentious divorce. He caught COVID 7 times and developed long COVID which led to depression.
- vii. His hours in his previous job reduced and reduced until he went off sick in July 2022. He lost that job in December 2022. He did not apply for any state benefits whilst off sick and was in receipt of statutory sick pay only.
- viii. The Respondent spent months inside with the curtains shut and did not reach out for help.
- ix. Now, his health is much better. He has had mental health issues in the past and exercise helped his recovery. He is now looking after himself.
- x. He has completed a Bachelor's Degree in Cyber Security and Network Management. He is now studying for an industry certificate that will allow him to work in that field.
- xi. He thinks it is fair that an eviction order be granted to be enforced if he defaults in the payment arrangement. He has made a proposal that he can afford.
- xii. He is speaking with the Housing Officer at Aberdeen City Council regarding alternative accommodation but would like to continue to live in the Property.
- xiii. He has other debts and is liaising with Aberdeen City Council about a plan to deal with those.

4. Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") dated 1 and 2 June 2021 that commenced on 4 June 2021.
- ii. The rent payable in terms of the PRT is £595 per calendar month payable in advance on the 4th day of each month.

- iii. On 31 October 2022, the Applicant's agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 1 December 2022 on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that rent arrears of £2,380 had accrued.
- iv. On 31 October 2022 the Applicant's agent sent to the Respondent by email a letter in satisfaction of the pre-action protocol.
- v. On 9 December 2022 the Applicant's agent served on Aberdeen City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The rent arrears balance as at the CMD is £4,930.
- vii. The Respondent's last payment was £425 on 7 March 2023 towards the rent due on 4 March 2023.
- viii. The Respondent proposes to pay £595 per month by way of the ongoing monthly rent plus an additional £100 per month towards the arrears.
- ix. The Respondent continues to live in the Property. He lives there alone.
- x. Previously, the Respondent failed to engage with the Applicant and her agents with regard to the rent arrears and gas safety checks.
- xi. The Respondent went through a contentious divorce. He caught COVID 7 times and developed long COVID which led to depression. His hours in his previous job reduced and reduced until he went off sick in July 2022. He lost that job in December 2022. He did not apply for any state benefits whilst off sick and was in receipt of statutory sick pay only.
- xii. The Respondent spent months inside with the curtains shut and did not reach out for help. The Respondent's health is much better. He has completed a Bachelor's Degree in Cyber Security and Network Management. He is now studying for an industry certificate that will allow him to work in that field.
- xiii. On 7 March 2023 the Respondent started a new job as a chef. Prior to that he had not been working for a number of months.
- xiv. The Respondent is paid fortnightly. His first wage is due to be paid on 17 March 2023.
- xv. The Respondent has other debts and is liaising with Aberdeen City Council about a plan to deal with those.
- xvi. The Applicant seeks an eviction order. The Respondent does not oppose an eviction order being granted.
- xvii. It is reasonable that an eviction order be granted.

5. Reasons for Decision

The factual background was not in dispute between the parties.

The Respondent had allowed the rent arrears payable to the Applicant to accrue to a total of 9 months prior to the payment of £425 being made on 7 March, only a matter of days prior to the CMD.

Whilst the Respondent has now sought support with his financial situation from Aberdeen City Council and has made a payment proposal to keep up with the ongoing rent and reduce the arrears, the Applicant (not surprisingly in light of the history) seeks the security of an eviction order to enforce only in the event that the Respondent defaults in the payment arrangement reached. Very fairly, the Respondent understood the Applicant's position and did not oppose an eviction order being granted in these circumstances but sought reassurance that the order would not be enforced if he maintains the agreed payments which he is committed to doing.

The Respondent has had a difficult period in his personal life but appears to have turned a corner, seeking support with his finances, obtaining full-time employment and progressing his career ambitions all of which is very commendable. As stated he appears committed to keep up with the ongoing rental payments and reduce and eventually clear the arrears.

(a) Applicant's request for permission under Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought

The tribunal considered the Applicant's request for permission under Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought. Ground 12A states:-

"12A Substantial rent arrears

(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."

The application otherwise proceeds upon Ground 12 alone. Any eviction order granted on Ground 12 alone would be caught by the current moratorium on evictions introduced by the Cost of Living (Tenant Protection)(Scotland) Act 2022.

At the point of serving the Notice to Leave on 31 October 2022 there were not “substantial rent arrears” as defined in Ground 12A in that the cumulative amount of the rent arrears did not equate to or exceed an amount that is the equivalent of 6 months' rent under the PRT. The tribunal considered it reasonable that the Applicant started the eviction process by serving a Notice to Leave at that time when the rent arrears amounted to the equivalent of 4 months rent in light of the Respondent's lack of engagement and the anticipation that rent arrears would continue to accrue as happened.

The Applicant is understandably reasonably apprehensive that, having only received one payment of rent in a sum of £425 just prior to the CMD since the previous payment in July 2022, there is a possibility that the Respondent may again default in paying sums due under the PRT. If an eviction order is granted under Ground 12 rather than Ground 12A the Applicant will be unable to recover possession of the Property until the moratorium on evictions is eventually lifted by the Scottish Government by which time the arrears due may have increased very significantly.

The tribunal took into account that as at the CMD “substantial rent arrears” are outstanding and due by the Respondent as defined in Ground 12A, being the equivalent of more than 8 months rent. The tribunal also took into account the Respondent's lack of opposition to an eviction order being granted recognising the position in which he had put the Applicant.

The Tribunal therefore granted permission in terms of Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought.

(b) Applicant's request for an eviction order

The tribunal then considered whether to grant an eviction order.

As stated as at the CMD the rent arrears due by the Respondent stood at £4,930 being more than 8 months rent. The accrual of the arrears was not wholly or partly as a consequence of a delay in failure or payment of a relevant benefit in that the Respondent had not applied for any such benefits.

The Applicant had complied with the pre-action protocol prescribed by the Scottish Ministers.

The tribunal considered whether or not it would be reasonable to grant an eviction order and determined that it is reasonable to grant an eviction order under Ground 12A of Schedule 3 of the 2016 Act.

However, in respect that –

- i. the Respondent has made a payment proposal that the Applicant appeared prepared to accept subject to an eviction order being granted,
 - ii. the Applicant has indicated she will not enforce such an order unless the Respondent defaults in payments due under any such payment arrangement, and
 - iii. that the Respondent did not oppose an eviction order being granted,
- the tribunal made an order delaying the execution of the order to 30 June 2023 to give the Respondent the opportunity to demonstrate his good faith by sticking to the payment arrangement reached all in terms of Rule 16A(d) of the First-tier Tribunal for Scotland Housing & Property Chamber Rules of Procedure 2017 (“the Rules”).

The tribunal encourages the Respondent to adhere to the payment arrangement reached and the Applicant to adhere to her commitment not to enforce the eviction order after 30 June 2023 for so long as the Respondent maintains the agreed payments due.

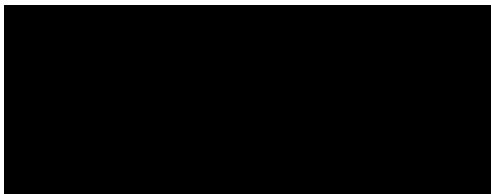
6. Decision

The Tribunal-

- i. Grants permission in terms of Section 52(5)(b) of the 2016 Act to include in the application Ground 12A of Schedule 3 of the 2016 Act as a basis upon which an eviction order is sought;
- ii. Thereafter grants an eviction order under Ground 12A of Schedule 3 of the 2016 Act but delays the execution of that order to 30 June 2023 under Rule 16A(d) of the Rules.

7. 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

16 March 2023

Date