



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/0062

Re: Property at 8 Northfield East, Tranent, East Lothian, EH33 1JU (“the Property”)

Parties:

MACINTOSH & SONS LIMITED, 40/14 Hardengreen Business Park, Dalhousie Road, Eskbank, EH22 3NU (“the Applicant”) per their agents, Ennova Law 26 George Square, Edinburgh, EH8 9LD (“the Applicant’s Agents)

Miss Claire Joyce Stewart, 8 Northfield East, Tranent, East Lothian, EH33 1JU (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 9 January 2023 and 26 April 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12A of Schedule 3 to the 2016 Act, that the tenant has substantial rent arrears.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties showing a monthly rent of £600.00;
 - ii) copy Notice to Leave in terms of Ground 12A, of Schedule 3 to the Act dated 8 November 2022;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £4,040.00 due and owing at 8 November 2022 and
 - v) pre-action requirement letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 14 July 2023 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 12 June 2023.
4. Prior to the CMD, the Applicant's Agents submitted an updated rent statement showing that arrears of £6,990.00 are now due and owing.

CMD

5. The CMD took place on 14 July 2023 at 10.00 by telephone. The Applicant was represented by Ms. R. Seaward of the Applicant's Agents. The Respondent was not present and was not represented. She did not submit written representations.
6. Ms. Seaward confirmed that the Applicant sought an eviction Order. She submitted that the Respondent had not engaged with the Applicant or their letting agents in any way. She advised that, from her knowledge of a payment action, the Respondent is in receipt of housing benefit but has not paid this to the Applicant and, although the Respondent stated that she would arrange to have the housing benefit paid direct to the Applicant, had not done so. Ms. Seaward advised that the Respondent had made a few payments following the CMD for the payment action but had not paid rent as it fell due.
7. With regard to the circumstances of the Parties, Ms. Seaward advised that she had no direct knowledge of the Respondent other than the information that the Respondent receives housing benefit and appears to continue to reside in the Property. With regard to the Applicant, Ms. Seaward understood that the Applicant has a small property portfolio and that there is a secured mortgage on the Property.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties;
 - ii) The monthly rent is £600.00;
 - iii) There are rent arrears of £6,990.00, which amounts to in excess of 11 months' rent;
 - iv) The Respondent receives an element of housing benefit;
 - v) The Applicant has a secured mortgage on the Property.

Issue for the Tribunal

9. The issue for the Tribunal was to determine whether or not to grant the Order sought.
10. The Ground on which the Application proceeds is Ground 12 A which at 12A (2) states: *“the First-tier Tribunal may find that the ground 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.”*
11. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussionincluding making a decision”* . The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

12. The Tribunal had regard to all the information before it and to its Findings in Fact.
13. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
14. The Tribunal had regard to the facts that the Applicant has a mortgage on the Property and is losing income as a result of the Respondent’s failure to pay rent. The Tribunal had regard to that fact that, although the Respondent receives an element of housing benefit, the rent due by her continues to increase. The Tribunal took the view that the level of rent arrears is not tenable for either Party. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction 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.

Karen Moore

Legal Member/Chair

14 July 2023.
Date