



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/23/0510

Re: Property at 98 Abbotswell Crescent, Aberdeen, AB12 5AT (“the Property”)

Parties:

Mr Idahosa Kelvin Esekhaigbe, 14 Northfield Road, Bury, BL9 6QD (“the Applicant”)

Ms Marina Tsirogianni, previously residing at 98 Abbotswell Crescent, Aberdeen, and whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016; and also under ground 10 of schedule 3 of the said 2016 Act.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the

2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -

- a. the tenancy agreement,
- b. the notice to leave with evidence of service
- c. section 11 Notice with evidence of service
- d. evidence of pre-action protocol
- e. rent statement

3. This was a case management discussion on 26 September 2023.

4. The applicant appeared with his agent Ms O’Neill from Grampian Community Law Centre. The respondent did not appear.

5. Service of the application had originally been attempted on the respondent on 26 June 2023. The sheriff officers found the front door to have been secured with a hasp and padlock and observed a notice attached to the door from the SSPCA providing their contact telephone number. A neighbour advised that the tenant and her two daughters had left the property around two months before, leaving several cats in the property. The neighbour had contacted the SSPCA who had attended at the property and removed the cats, with the police, who had then secured the property.

6. The tribunal then proceeded to serve the application by service by advertisement from 18 August 2023 until 26 September 2023. As service had been carried out the tribunal was entitled to continue with the case management discussion.

7. The applicant’s agent had submitted further information before the case management discussion including an updated rent statement and correspondence between the agent and the respondent by email. The email from the agent dated 25 July 2023 to the respondent noted that she was no

longer residing in the property, noted that there was ongoing eviction proceedings in the tribunal and suggested she may wish to voluntarily terminate the tenancy. The respondent responded by email on 2 August 2023 noting the eviction proceedings were underway, and offering to empty the property by the end of September and come to an arrangement with the agent to do so. She also advised that she had had health issues; and that she was getting a council house.

Discussion

8. The applicant's agent advised that the applicant seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears).
9. The notice to leave used, was the older style notice to leave (in place, before the cost of living statutory changes had come into force in October 2022), it did not have any box for ground 12A. The application was clear that what was being requested was eviction under ground 12A. The applicant moved the tribunal to formally be allowed to rely on ground 12A - substantial rent arrears. The tribunal was prepared to amend the application to ground 12A as it was clear from the application papers that the intention was to bring the application in as a ground 12A application and also as the application appeared to meet the requirements for 12A.
10. The tribunal queried whether she wished to further amend the application and also have the application considered under ground 10 - not occupying the let property, given the sheriff officers' report and her own emails showing that the tenant was not occupying it. The applicant confirmed that they were happy to amend to include this ground as long as it did not delay the eviction process. The tribunal was prepared to allow the application to be considered under this ground too, given that it appeared that the tenant had not been residing in the property for at least 4 months, noting that since she had left the property the police had secured it, and no entry had been taken to it since at least before

June 2023. Further, the correspondence from the agent noted that she was not occupying the property, and the tenant's response appeared to confirm this.

11. In terms of ground 12A they advised that the tenant had owed rent since August 2020. She had since made a number of payments initially, then sporadic payments and then stopped altogether in March 2022.
12. The agent advised that there had been 6 months' rent arrears when the notice to leave was served on the respondent. The applicant's agent advised that the rent arrears had continued to accrue, and they were now £12,000 as at August 2023.
13. They advised that the applicant had complied with the pre-action requirements and had also complied with the other statutory requirements, including service of the notice to leave and section 11 notice.
14. She advised that there are substantial rent arrears due by the respondent.
15. In terms of Ground 10, she advised that the applicant had contacted the SSPCA after they received a copy of the sheriff officer's report that the tenant was no longer at that address. She advised that the SSPCA had attended at the property with the police, and it was the police who had secured the property. The police were holding the keys (and therefore access) for the property. The tenant had not gone to the police to get a key and take access.
16. They did not know the exact date when the tenant had left the property, but they thought it was around March or April 2023. Upon receiving the sheriff officer's report, they also emailed the tenant, to ask if she would give up the property. She replied asking if she could have until the end of September to remove her belongings. She has not responded to the agent since that date.
17. The agent advised that they did not have a detailed background of the history of the tenant. They believe that she has been re-housed by Highland Council

and therefore was not under any detriment in terms of homelessness. They thought she had a daughter but did not know her age.

18. The applicant advised that it was really important for him to get the property back. He had been working in England but was now unemployed. He advised that he was also currently being evicted from his accommodation in England. He needed the property back in order to live in it. He advised that the property was his home, he had rented out when he had gone to England to work. He also advised that financially he could not afford for the order not to be granted, as there is a mortgage for the property and the tenant's ongoing failure to pay rent was causing him financial hardship.

19. He advised that it had taken a while to get to the tribunal as he had been affected by the changes to the periods in the notice to leave and had originally served the wrong notice and had to start again. He had tried to contact the tenant to get her to pay her rent, she had promised to pay the rent but then failed to do so. Her failure to pay rent had placed the applicant into debt.

20. The applicant was not sure what benefits the tenant had been receiving but he thought that there would not be any failure in benefit payment as she had taken advice from the council about her rights as a tenant.

Findings in Fact

21. The Tribunal found the following facts established: -

22. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 February 2020

23. The tenant was Marina Tsirogianni.

24. The landlord was Kelvin Esekhaigbe.

25. The property was 98 Abbotswell Crescent, Aberdeen.
26. The tenancy stated that rent was £600 a calendar month payable in advance.
27. There was submitted a notice to leave dated 22 September 2022, stating that an application would not be made until 30 October 2022. It sought eviction under ground 12 rent arrears. It set out that rent arrears due were £6,000.
28. The notice to leave had been emailed to the tenant. There was evidence of service.
29. Rent arrears as of March 2023 were £9,600.
30. Rent arrears as of August 2023 were £12,000
31. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
32. There were rent statements submitted showing the arrears.
33. There was evidence of correspondence between the landlord and the tenant about the rent arrears. The correspondence asked the tenant to repay the arrears.
34. There was no evidence of failure or delay in any benefit payment to the respondent.
35. There had been arrears on the account since September 2020.
36. That since at least June 2023 and probably since around March 2023, the tenant had not been occupying the property. The property had been secured by the police and they held the keys for the property. The tenant had responded to correspondence from the agent for the applicant only to ask for time to move

her belongings out of the property. The tenant advised she was getting a council house.

Reasons for Decision

37. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

38. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms: -

“Substantial rent arrears

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). ...

Not occupying let property

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

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

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted,
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(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

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

(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).

39. The tribunal allows this application to be considered under ground 12A. The tribunal also allows this application to be considered under ground 10.

40. The applicant appeared. The respondent did not appear. The applicant confirmed that he sought an order for eviction based on the fact that when the notice to leave had been served there had been at least 6 months' rent arrears due. Turning to whether Ground 12A was met. It appeared that the first part of the ground 12A was clearly met given the level of arrears when the notice was served, when the application was made and at the date of the case management discussion.

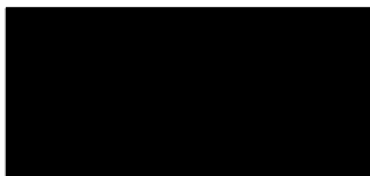
41. It was also clear that the applicant was not occupying the property given it had been secured by the police, and the correspondence between the agent and the applicant since the sheriff officer's report had been provided to the agent. We also find the first part of ground 10 made out.
42. The tribunal therefore requires to consider if it would be reasonable to grant the order. We take into account that there appeared to be no failure of any benefit payment due to the respondent. Further, the applicant had sent out correspondence to the respondent about her arrears and asking her to make payment. It did appear that the landlord had tried to engage with the respondent to enter into a repayment plan with the respondent. The attempts had been unsuccessful.
43. We take into account the very high level of arrears, and the fact that it appears clear that the tenant has no intention of returning to the property.
44. We take into account that this is the applicant's home, and he needs to be able to return to it as he is currently being evicted from his tenancy. We also note that the tenant's conduct has caused financial hardship to the applicant as he has a mortgage for this property and failure to pay the rent will impact his ability to pay the mortgage.
45. We consider it is reasonable to grant the order for eviction under both grounds. The tribunal would note that it would be prepared to grant an order for eviction under each ground separately, as they are both clearly made out.
46. Considering the papers before us and the oral submission by the applicant and the respondent, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 A and ground 10 were met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

47. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016; and also, under ground 10 of the said 2016 Act.

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.



27th September 2023

Legal Member/Chair

Date