



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/23/2463

Re: Property at 20 Lesmurdie Court, Elgin, IV30 4JL (“the Property”)

Parties:

Kerrie Wilson, Dunchattan, 49 Mayne Road, Elgin, IV30 1PF (“the Applicant”)

Dorota Ofat, 20 Lesmurdie Court, Elgin, IV30 4JL (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 16 November 2019, albeit the agreement was in an assured tenancy style.
2. The application was undated but lodged with the Tribunal on 25 July 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, though where eviction was sought under Ground 12A there would be no additional requirements under that Act.
3. The application relied upon a Notice to Leave dated 5 June 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by Sheriff Officer on 6 June 2023. The Notice relied upon Grounds 11, 12, and 12A of Schedule 3 Part 1 of the 2016 Act. In respect of

Ground 11, the Notice stated “You have breached terms of your tenancy agreement (Per tenancy agreement sections 1 (c) (i), 2 (a), 4, 6, 7, 7 (e) (g) (h) (i)”. It further referred to three attached documents in regard to providing further detail. The first was a copy of the Tenancy Agreement with the sections referred to highlighted. This was provided with the application papers. The second was described as a “breakdown” of the various alleged breaches. We were provided with a copy of this nine-page document shortly before the case management discussion (“CMD”) as it was not provided to the Tribunal until 30 September 2023. The third was a statement of arrears. We were not provided with a copy of the statement as served, but were provided with two updated versions. (During the CMD, the Applicant explained that the version served with the Notice to Leave was the same document, but with the last entry in the table being the rent due as at 31 May 2023.) The statement of arrears said to have been lodged with the Notice thus stated that arrears as of 31 May 2023 were £3,750. The Tenancy Agreement stated that rent was £575 per month, so the arrears at the date of the Notice were just over 6.5 months of arrears. The Notice intimated that an application to the Tribunal would not be made before 7 July 2023.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Moray Council on 25 July 2023 was provided with the application. There was further evidence provided by the Applicant, after a further information request from us, of the Applicant providing pre-action protocol information in standard form to the Respondent by email on 15 December 2023, 1 January 2023, and 25 January 2023.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 October 2023 at 14:00. We were addressed by the Applicant. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant stated that there had been no contact from the Respondent regarding the eviction itself since a letter of 3 May 2023 (which was sent in response to an earlier Notice to Leave of April 2023 that was not relied upon by the Applicant). The Applicant stated that any contact from the Respondent since has been restricted to discussions on payment of the arrears, with the last contact being on 23 September 2023 when the Respondent sent the Applicant a WhatsApp message which appeared to confirm that she was offering payments towards the arrears at £100/week each Friday. The Applicant believed that the Respondent remained in occupation of the Property.
7. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until after 14:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.

8. At the CMD, the Applicant confirmed that the application for eviction was still insisted upon and referred to an updated statement of arrears sent to the Tribunal on 29 September 2023. It showed arrears now reduced to £2,179.21 as at 22 September 2023. The Applicant said that a further payment of £100 was received during 29 September 2023 and arrears were now £2,079.21. The Applicant had received direct payment of Universal Credit since January 2023, and the Respondent had routinely made a made to top-up the UC payment (which was currently less than £575) so as to cover rent. The Applicant said that the Respondent's rent payments had often been erratic but the highest point of the arrears was on 31 December 2022, when they reached £3,925. The Respondent then made a number of low payments, and since mid-June 2023 had been making frequent £100 payments on Fridays, but not every Friday. We noted 11 payments of £100 across a period of 16 weeks (plus an overpayment of the top-up on 14 July 2023, which reduced the arrears by a further £0.79). The Applicant had received no indication of any pending payment of back-dated Universal Credit against the arrears.
9. The Applicant explained that she understood the arrears to have arisen due to the Respondent previously withholding rent because of complaints with the condition of the Property. The Applicant said that all issues of the condition of the Property were now addressed, and that the main issues all arose due to the Respondent failing to report timeously a leak from the bathroom. The Applicant said that by the time the leak was noted by the Applicant at an inspection, it had already caused major damage and required substantial repairs to the Property. It was the Respondent's failure (in the Applicant's view) to attend to her obligations under the Tenancy to maintain the Property and report any wants of repair timeously which underlay most of the Ground 11 breaches relied on in the Notice to Leave.
10. In regard to the Respondent's payments, the Applicant had asked (by email) on 11 September 2023 whether the Respondent was now proposing a formal £100/week payment each Friday. The Respondent first said she could not respond promptly as she had suffered a family bereavement, and the Applicant sent her condolences and left matters a short while. When the Applicant raised it again, the Respondent responded on 23 September 2023 with a response that the Applicant understood to be a formal acknowledgement that the Respondent wanted to repay the arrears each week with a £100 payment on a Friday, but since then only two payments had been made across the three weeks.
11. During the CMD, the Applicant confirmed the documents that had been served with the Notice to Leave and, in the case of the rent statement, described that document in reference to the later versions of it which had been lodged. She explained that the rent statements we had been provided were the same document but with further entries added to the bottom (as rent became due and payments were made). We noted that the Tenancy Agreement said that rent was due on the 16th of each month. The Applicant explained that after a few months in the Property the Respondent had asked to change the payment date to the last day of each month. We noted that the statement lodged illustrated this change of payment schedule.

12. In regard to reasonableness, the Applicant believed that the Respondent lived with her two sons, one in his mid-20s and the other in his late teens (and probably below 18). The Applicant also believed that the Respondent's male partner lived with her, or at least frequently visited. (The Respondent (in her letter of 3 May 2023) said her partner lived elsewhere.) The Applicant did hold that the Respondent had in any case breached the Tenancy Agreement by having her family live with her, as her impression from the original viewing was that the Respondent and a female friend were to be the occupants. The Applicant said that the Respondent had also admitted to smoking in the Property in breach of the Tenancy (in response to the Applicant noting, on an inspection, a strong smell of smoke). The Applicant knew of no adaptation of the Property for the Respondent's use, nor of any reason that the Property was especially suitable for her or her family's needs (such as proximity to a source of support or work).
13. In regard to reasonableness regarding the Applicant's position, she was a co-owner of her home address with an ex-partner. This was her only other property. She had recently separated from her partner, and she was discussing financial arrangements of their separation. She wished to sell the Property to reduce debts that she had incurred and to seek to avoid requiring to leave her own home (now that she was solely responsible for the mortgage and upkeep of it). She described the issues with the Property as having caused great stress to her, and the period when no rent was being made as having caused particular financial difficulty for her. The Applicant had two young sons, both of whom had medical issues. She appreciated that a proposal was now made by the Respondent to repay the rent arrears, but it had not been fully met and she was concerned as to whether the arrears would be fully addressed and rent promptly made in future. In regard to her role as a landlord, she described difficult periods of contact with the Respondent, especially over the repairs, when she had found the Respondent very aggressive. In all the circumstances, she wished to discontinue being a landlord and needed to realise the value of the Property as part of her future plans as a new single parent.
14. No motion was made for expenses.

Findings in Fact

15. On or about 16 November 2019 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of 16 November 2019 ("the Tenancy").
16. In terms of clause 2(a) of the Tenancy Agreement, the Respondent required to pay rent of £575 a month in advance on the 16th day of each month.
17. In or around December 2019, the parties agreed that the Tenancy Agreement would be varied so the Respondent would be required to pay rent of £575 a month in advance on the last day of each month.

18. On 5 June 2023, the Applicant agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she had been in continual rent arrears since 28 February 2021 and in total arrears as at that date in the amount of £3,755, being the equivalent of over 6.5 months' of arrears, and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act (amongst other grounds).
19. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 5 July 2023.
20. The Applicant served a copy of the Notice to Leave by Sheriff Officer service on 6 June 2023.
21. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act (amongst other grounds).
22. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Moray Council by the Applicant on 25 July 2023.
23. The Applicant provided the Respondent with pre-action protocol information by way of letter sent by email on 15 December 2023, 1 January 2023, and 25 January 2023.
24. As of 10 October 2023, the Respondent remained in arrears of rent in the amount of £2,079.21 which is equivalent of over 3.5 months' of rent.
25. The Respondent does not claim to have paid any amount of the arrears of £2,079.21 remaining as at 10 October 2023.
26. The sum of arrears remaining as of 10 October 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. On 1 September 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 10 October 2023 by Sheriff Officer.
28. The Respondent has one son living with her under 18, and a further son living with her in his 20s.
29. The Property is not specially adapted with the use of the Respondent.
30. The Applicant wishes to sell the Property so as to address financial issues arising from the historic period of non-payment, and further to a recent relationship break-up; and so as to discontinue being a landlord during a period in which she has a number of stressful personal matters she requires to address.

Reasons for Decision

31. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
32. Ground 12A of the said Schedule applies if:
 - (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.*

33. The arrears information provided clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding as at the date of the Notice to Leave. It showed that material arrears remained outstanding (albeit that the sum in the arrears had continue to reduce since the Notice to Leave).
34. Further, we were satisfied that it was fair to draw an inference from the facts presented to us that there is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. The Universal Credit payments have been ongoing for some months and any back-dated payment would have been received by now. None has been received, and the historic arrears of well over three months' of arrears remain outstanding. Further, the Applicant stated no communication from the Respondent which suggested the arrears had developed due to a problem with benefits. (The Applicant stated that the Respondent had claimed that she ceased to pay rent due to the dispute over the condition of the Property.) We were thus satisfied that Ground 12A was made out even with the reduction in the arrears.
35. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicant to seek eviction given the amount, and the duration of the arrears. Her reasons for wishing to cease being a landlord and to sell the Property were compelling. She said that there was an increased chance of her requiring to leave her family home if the Property could not be sold in early course. We found her submissions on reasonableness compellingly in her favour.
36. In the circumstances, the arrears were substantial at the time of the Notice and remain significant some months later. There has been engagement by the Respondent on payment of the arrears but she had failed to make regular payments. We are satisfied to grant the order sought under Ground 12A and are not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.
37. In regard to Ground 12, as Ground 12A is made out, so is Ground 12. Had Ground 12A not been sought, we would have granted eviction (subject to the 2022 Act) under Ground 12. We decline to do so as it is unnecessary.
38. We have declined to make a final determination on Ground 11. Substantial documentation was provided to us regarding the wants of repair, when the issues were likely to have first arisen compared to when they were reported by the Respondent, the contact between the parties, and the Applicant's steps to address the repairs as a matter of urgency (and the Applicant's position that the Respondent failing to be entirely cooperative during the works). As we reached our decision on Ground 12A during the CMD, we declined to spend further judicial time considering this voluminous documentation in full as it was unnecessary. Further, the Applicant sought eviction in early course and any eviction under Ground 11 would be subject to the 2022 Act. Thus an order under Ground 11 was not her principal remedy.

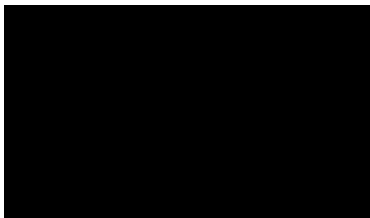
39. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

Decision

40. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 12A of Schedule 3 of that 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.



10 October 2023

Legal Member/Chair

Date