



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/2273

Re: Property at 2 Strath Cottages, Cluny, Inverurie, AB51 7RS (“the Property”)

Parties:

Cosmo Linzee Gordon, trading as Cluny Estate, 27-30 Carden Place, Aberdeen, AB10 1UP (“the Applicant”)

Ms Sarah Irving, 2 Strath Cottages, Cluny, Inverurie, AB51 7RS (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

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 dated 24th and 25th October 2018;
 - (ii) Notice to Leave dated 16 November 2020 stating that proceedings for possession will commence no earlier than 19 May 2021 and citing ground 12 with proof of service;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council and proof of service;
 - (iv) Statement of Arrears as at August 2021; and
 - (v) Copy letters and emails between the Applicant and Respondent dated between 28 May 2020 and 8 March 2021.
- 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 1st December 2021 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. 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 Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 1st December 2021. The Applicant was represented by Ms Dionne Brady, Gillespie McAndrew Solicitors. The Respondent was not present. The Tribunal noted that she had been served with the application paperwork together with notification of the date, time and location of the Case Management Discussion and therefore determined to proceed in her absence.
- 4 Ms Brady addressed the Tribunal on the terms of the application. She explained that the Applicant had complied with the pre-action requirements, with reference to the correspondence lodged in process. The Applicant had made efforts to work with the Respondent, and assist her with her rent payments. She had been asked to make proposals for payment but had either failed to do so, or failed to comply. Ms Brady made reference to the Notice to Quit which provided for a period of six months notice. The Applicant had therefore complied with the statutory requirements and sought an order for repossession. Ms Brady noted that no representations had been received from the Respondent following service of the application. As far as the Applicant was aware, the Respondent was unemployed.
- 5 In response to questions from the Tribunal, Ms Brady explained that she was not aware of any benefits in place, nor any applications pending. The Applicant had not been in recent communication with the Respondent and was not aware of her current circumstances. She had been in and out of employment, it was understood that she had lost her job prior to the pandemic which aligned with the cessation of rent payments in November 2018. Since then payments had been sporadic. Ms Brady explained that the Respondent has children, but the Applicant is not aware of their ages. There had been recent movement at the property, which indicated that the Respondent may be back in employment but the Applicant couldn't confirm that this was

definitely the case. Ms Brady explained that the last payment of rent had been on 24 August 2020 in the sum of £400. The arrears outstanding as at the date of the Case Management Discussion were £12,300. Ms Brady advised that the Applicant had not approached the local authority about payments.

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 12

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. (4) In deciding under subparagraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

8 The parties entered into a Private Residential Tenancy Agreement which commenced on 27 October 2018.

9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

10 On 17 November 2020 the Applicant's Representative delivered a Notice to Leave to the Respondent by recorded delivery mail. 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 19 May 2021.

- 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 £450 per calendar month.
- 13 As at 4 February 2021, arrears in the sum of £6450 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £12,300 were outstanding.
- 15 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 16 The Applicant's Representative has sought to enter payment agreements with the Respondent and has provided information on where to seek advice and assistance to address her rent arrears. The Respondent has not responded to any recent attempts at contact.
- 17 The Respondent has children residing with her.
- 18 The last payment to the rent account was on 24 August 2020.
- 19 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.
- 20 It is reasonable to make the order sought by the Applicant.

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. The Respondent had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis 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.
- 22 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's 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 Respondent and therefore that the Notice to Leave was competent.

- 23 The Tribunal accepted that there were rent arrears outstanding in the sum of £12,300. It was apparent from the rent statement provided, and the submissions by Ms Brady at the Case Management Discussion, that the payments to the rent account by the Respondent had been sporadic. The rent arrears had been steadily increasing for approximately two years by the date of the Case Management Discussion.
- 24 The landlord's duty to comply with the pre-action requirements was also relevant to the application before the Tribunal and it therefore had to consider whether the Applicant had complied with that duty, and if not, what weight to give to any failure to comply having regard to the particular facts and circumstances of the case. The Tribunal was of the view that the Applicant had complied on the basis of the paperwork produced and the submissions made at the Case Management Discussion and having regard to the level of arrears, the period over which arrears had accrued and the failure on the part of the Respondent to engage, the Tribunal considered that it would be reasonable to grant the order for eviction. The Tribunal was however conscious that the Respondent had children, and would therefore request that the Applicant contact the local authority to advise of the granting of the order, so that they can offer advice and assistance to the Respondent on her housing options.
- 25 The Tribunal therefore determined to make an eviction order. 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.

Ruth O'Hare

1st December 2021

Legal Member/Chair

Date