



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/22/3942

Re: Property at 3 Aberdeen Road, Alford, Aberdeenshire, AB33 8ED (“the Property”)

Parties:

Mr Jonathan Rory Winterbottom, Mr Paul Sean Winterbottom, 4 Alen Drive, Alford, Aberdeenshire; 4 Cowieson Crescent, Pitmedden, Ellon, Aberdeenshire, AB41 7GJ (“the Applicant”)

Mrs Susan Anne Law, 3 Aberdeen Road, Alford, Aberdeenshire, AB33 8ED (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

On 28th October 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property under section 51 and Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement showing a commencement date of 10th May 2019 and a rent of £650 per month
2. Copy Notice to Leave dated 25th July 2022;
3. Copy email dated 25th July 2022 to the Respondent serving the Notice to Leave;

4. Section 11 Notice;
5. Rent Statement.

The Application was served on the Respondent by Sheriff Officers on 21st February 2023.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Naglick of Aberdeen Considine & Company, Solicitors. There was no attendance by the Respondent or any representative on her behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Miss Naglick sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She outlined that the lease had begun on 10th May 2019, with a rent of £650 per month. A Notice to Leave had been served by email on 25th July 2022. The Respondent did not leave at the expiry of the notice period.

Miss Naglick said that the arrears when the action was raised were £4650. They now stand at £9850. The amount is significant. There has been no contact from the Respondent to explain or to offer to pay.

Miss Naglick said that her clients spoke to the Respondent at the end of 2021 about the arrears and she said she gave assurances she would pay. She failed to do so. She has told them that she will not leave unless an eviction order is granted.

Miss Naglick was asked if her clients had followed the Pre Action Requirements in terms of The Rent Arrears Pre Action Requirements (Coronavirus)(Scotland) Regulations 2020. She said that a letter had been sent by her firm at the time the Notice to Leave was served, but the Applicants seemed to have spoken to the Respondent rather than written to her.

Miss Naglick thought that the Respondent lived alone, there were no children in the property. She had no information about employment or benefits claims, and the Respondent had not engaged with the Applicants. She submitted that it was reasonable to grant the order.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 10th May 2019;

3. The rent was £650 per month;
4. A Notice To Leave, dated 25th July 2022, was served timeously and correctly;
5. The Application was served on the Respondents by Sheriff Officer on 21st February 2023;
6. At the time the Notice to Leave was served the arrears were £4650;
7. At the time the action was raised the arrears were £6600;
8. As at today's date the arrears are 9850.

Reasons for Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert "; and

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

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert "; and

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

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert "; and

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

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

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

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

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

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

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

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

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

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

If the ground of eviction is established the Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established Ground 12.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.

The Tribunal considered all the points put forward. There was very little in connection with The Rent Arrears Pre Action Requirements (Coronavirus)(Scotland) Regulations 2020, however, the arrears had continued to increase after service of both the Notice to Leave and the application to the Tribunal. There were no children living in the property and no evidence that the Respondent suffered from ill health. The Tribunal considered that the level of arrears, being more than a year’s rent made it reasonable in and of itself to grant the 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.

A Kelly

27.03.2023

Legal Member/Chair

Date

