



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1787

Re: Property at 27 Tweedie Terrace, Annan, DG12 5ER (“the Property”)

Parties:

The Executor of Janet Barrie Clark, Harper, Robertson & Shannon, 100 High Street, Annan, DG12 6EH (“the Applicant”)

Ms Julie Dalgleish, 27 Tweedie Terrace, Annan, DG12 5ER (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)

Decision

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

Background

1. This is a Rule 109 application made in the period between 1st June and 4th July 2023. The Applicant is seeking an eviction order under ground 12A. The Applicant lodged a copy of the private residential tenancy agreement between the parties, which commenced on 8th February 2019 with a monthly rent of £450, copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, pre-action requirement correspondence dated 5th and 14th April and 10th May 2023, an email from the Respondent dated 10th February 2023, Certificate of Confirmation, a death certificate, and a rent statement.

Case Management Discussion

2. A Case Management Discussion (“CMD”) took place by telephone conference on 4th October 2023. The Applicant was not in attendance and was represented by Mr Murray Bolling, Solicitor. The Respondent was in attendance.

The Applicant's position

3. Mr Bolling moved the Tribunal to grant the eviction order. The rent arrears were £15,150 at the time of serving the Notice to Leave on 17th January 2023. The arrears are now £19,200. No rent has been paid since August 2020. The Applicant is likely to sell the Property if the eviction order is granted.

The Respondent's position

4. The Respondent said she was not opposing the order. She agreed the sum stated was outstanding and said her difficulties had begun in 2020. The Respondent said she is waiting for a medical diagnosis and her condition may have impacted upon the situation. She lives with her two children, aged 9 months and 9 years, and her partner. She is in part time employment. Her partner is in full time employment.
5. Responding to questions from the Tribunal, the Respondent said she has tried to access alternative private housing but she has not been successful. She has contacted the local authority and is waiting for a response. Asked whether she had contacted the homelessness team, the Respondent said she had spoken to someone at the local authority who was going to contact the Applicant's representative to discuss the level of arrears, but she has not heard anything further. Asked if she had any proposals to make regarding the arrears, the Respondent said she had not. She thought she may have contacted the Applicant regarding a payment plan in the past but she was unsure about this. Responding to questions from the Tribunal, the Respondent confirmed there were no other medical issues within the family.

Findings in Fact and Law

6.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 8th February 2019 with a monthly rent of £450.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.
 - (iii) The Respondent has accrued rent arrears.
 - (iv) The Respondent had substantial rent arrears in the sum of £15,150 which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the Notices to Leave.
 - (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
 - (vi) The Applicant has complied with the pre-action protocol.

(vii) It is reasonable to grant an eviction order.

Reasons for Decision

7. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact.
8. The Respondent had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave. The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit. The Tribunal is satisfied that Ground 12A has been established.
9. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
10. The Respondent has been a tenant since February 2019. There was a period of rent arrears from June to September 2019. The Respondent has not paid her rent since August 2020. The Respondent does not appear to have taken steps to ascertain her chances of being allocated social housing if the eviction order is granted, and she has been unable to access alternative private housing. The Respondent is awaiting a diagnosis for a condition that may have had an impact on her ability to manage her finances. The Respondent has two young children, and the granting of an eviction order is bound to cause difficulty for the family. However, the Respondent has a partner, and both she and her partner are in employment. No compelling reason was given for the failure to pay the ongoing rent, or to address the arrears. The Tribunal noted that there was an email from the Respondent in the case file dated 10th February 2023 mentioning her poor health and setting up a repayment plan, but this was not progressed by the Respondent. The Tribunal took into account the fact that the Respondent said she had no proposals to put forward in terms of clearing the arrears.
11. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. Rent has not been paid since August 2020 and the sum outstanding is substantial. There appears to be no prospect of the Respondent paying her ongoing rent or addressing the arrears. The Applicant has complied with the pre-action protocol.
12. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

13. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 8th November 2023.

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.

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**Helen Forbes
Legal Member/Chair**

**4th October 2023
Date**