



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/23/1022

Re: Property at 22 Lindsay Gardens, Bathgate, West Lothian, EH48 1DU (“the Property”)

Parties:

Mr Ronald McFarlane, C/O Mavor and Company, 16 Union Square, West Calder, EH55 8EY (“the Applicant”)

Mr Anthony Stark, Ms Nicolle Tillet, 22 Lindsay Gardens, Bathgate, West Lothian, EH48 1DU; 22 Lindsay Gardens, Bathgate, West Lothian, EH48 1DU (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under Ground 12A of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 29 March 2023. The documents produced were a Tenancy Agreement dated 1 June 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies)(Scotland) Act 2016 (“Act”) dated 20 February 2023 (“Notice to Leave”) with attached rent statement showing arrears of £5697.68; Execution of service of Notice to Leave by Sheriff

Officers dated 20 February 2023 ;notification to the Local Authority in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 29 March 2023 and sheriff officer's execution of service certifying service of the Application on 21 July 2023

Case Management Discussion (CMD) on 18 August 2023

2. The CMD took place by teleconference on 18 August 2023. There was no appearance by the Respondent. The Applicant was not present but was represented by his Representative Mr Callum McQueenie from Mavor and company who are the Letting Agents for the Property.
3. The Tribunal enquired whether the Applicant had any further information to provide to the Tribunal regarding the arrears of rent.
4. An updated rent statement was provided to the Tribunal which showed that at the date of the CMD that the rent outstanding amounted to £5701.68 and that the rent arrears had been in place for a considerable period of time, and certainly over the past 3 months.
5. Mr McQueenie also told the Tribunal that the tenants had originally moved into the Property in October 2017. The Private Residential Tenancy agreement ('PRT') was signed in June 2018. At the date the tenancy agreement was signed the Respondent was in considerable rent arrears of approximately £990, and the Applicant had, as a good will gesture, written off the rent arrears prior to the RRT commencing.
6. Mr McQueenie also stated that the Respondent had instructed service of the Notice to Leave, and that prior to doing so, several letters had been sent to the Respondent. This communication set out the rent arrears and pointed the Respondent in the direction of appropriate advice agencies in order to comply with the pre-action protocol.
7. The Tribunal were provided with copies of the communications sent to the Respondent on 23 February 2023, 3 March 2023 and 17 March 2023.
8. Mr McQueenie also advised the Tribunal that a separate Notice to Leave had been served on the Respondent on the ground that the Applicant wished to sell the Property dependent on how this application was dealt with.
9. The Tribunal requested some information regarding the circumstances of both the Applicant and the Respondent. Mr McQueenie said that his Letting Agent Company had been approached by the Applicant and asked to take over the management of the Property in 2020 due to the Applicant's ill health. Mr McQueenie's understanding was that over the years, the Applicant had made various requests to the Respondent to bring the rent arrears down, to no avail.

The Applicant suffered a heart attack in 2020. He has made a good recovery and has had a pacemaker fitted. He is in his 60s. He does not rent out any other properties.

10. The second Respondent Ms Tillet is in receipt of Universal Credit and an application was made in 2020 for the Applicant's Representative to receive her Housing Benefit direct. The Applicant assumes she is still unemployed as her benefit payment is still being paid over. However, this is not making any inroads into the considerable arrears which have accrued.
11. As far as the Applicant is aware, the Respondent continues to reside at the Property along with 3 children who are under the age of 18. The Property has not been adapted, and the Applicant is unaware of any health complications that the Respondent has. The Applicant believes that the couple may have split up in 2018-2019 but they are believed to be back together. They are in their approximate mid 30s.
12. Mr McQueenie said that the last time that he visited the Property would have been in March 2023 when the Respondent advised that they were looking to apply for local authority accommodation.
13. He sought an Order for Eviction under Ground 12A.

Findings in Fact

14. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 1 June 2018;
 - (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £645 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Grounds 12 and 12A of Schedule 3 to the 2016 Act, and which was served on 20 February 2023;
 - (iv) On 20 February 2023 the Respondent was in rent arrears over three consecutive months;
 - (v) On 20 February 2023 the Respondent was due outstanding rent of £5697.68 which is over 6 months rent and is substantial arrears;
 - (vi) The Respondent has been in continuous arrears of rent since at least February 2020 ;
 - (vii) The Respondent is in arrears of rent amounting to £5,299.39 at the date of the CMD ;
 - (viii) On the date of the CMD the Respondent was in rent arrears over three consecutive months;
 - (ix) On the date of the CMD the Respondent was due over 6 months rent and the rent arrears due are substantial;
 - (x) The Applicant has complied with the pre-action protocol requirements before raising the application with the Tribunal.

15. Reasons for Decision

Section 51 of the 2016 Act states as follows:

51 (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.

16. Ground 12A of Schedule 3 to the 2016 Act states as follows:

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).

(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.]

17. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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

(2) (2).

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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 sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to— (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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.

(6) Regulations under sub-paragraph (4) (b) may make provision about— (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy), (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy, (c) such other matters as the Scottish Ministers consider appropriate.

18. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified Ground 12 and Ground 12A, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD.
19. The Tribunal was also satisfied that both at the date of service of the Notice to Leave and at the date of the CMD that there were substantial rent arrears in terms of Ground 12A. The Tribunal was satisfied that there was no information before it to suggest that the Respondent being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
20. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since at least February 2020. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the Respondent, offer the Respondent assistance and signpost them to appropriate advice agencies. The Tribunal also took account of the Applicant's circumstances and balanced these against the competing interest of the Respondent. The Applicant is a small landlord with only one property. He has health complications and has intimated he wishes to sell the Property. In all the circumstances, the Tribunal was satisfied that it was reasonable to grant the Order.
21. Given that the substantial rent arrears, Ground 12A, allows the Applicant to enforce the Order immediately, the Tribunal proceeded to grant the Eviction Order under that ground.

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.

Yvonne Mckenna

Legal Member/Chair

18 August 2023

Date