



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/23/1465

Re: Property at 41 Whistleberry Wynd, Hamilton, ML3 0SE (“the Property”)

Parties:

Mr Joseph Sander, 1 Fernhill Grange, Bothwell, Lanarkshire, G71 8SH (“the Applicant”)

Ms Marion Buchanan, 41 Whistleberry Wynd, Hamilton, ML3 0SE (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Background

By application, dated 9 May 2023, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12A of Schedule 3 to the Act, namely that the Respondent has substantial rent arrears.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 22 July 2019 at a monthly rent of £695, a Notice to Leave, dated 6 March 2023, confirming the rent arrears as £6,255, advising of the Grounds on which the Applicant was seeking an Eviction Order (then Grounds 12 and 12A) and that an application to the Tribunal for the Order would not be made before 6 April 2023. The Applicant also provided a Rent Statement showing arrears as at 29 May 2023 of £5,650 and a series of emails to the Respondent regarding the arrears, in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The emails were sent in May, August, November and December 2022 and the email of 1 December 2022 had advised the Respondent of legislation enacted giving tenants more protection against possible eviction due to the cost of living crisis.

On 27 July 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written

representations by 17 August 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 24 August 2023. The Applicant was present. The Respondent was not present or represented.

The Applicant confirmed that no rent had been paid since the date of the application. He told the Tribunal that the Respondent had failed to engage with him to discuss the rent arrears and asked the Tribunal to accept that it was reasonable to issue an Eviction Order due to the substantial rent arrears and the failure of the Respondent to engage. He bore no ill-will towards the Respondent, but the arrears now stand at over £9,000 and, recognising that recovering the sums due might, at best, be extremely difficult, he was trying to salvage the situation by recovering possession of the Property.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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.

Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding 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 or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers and continued in force by Section 49 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022.

The Tribunal was satisfied that the rent was more than 6 months in arrears at the date of service of the Notice to Leave, that the Applicant had taken some steps to make the Respondent aware of the additional protections introduced due to the cost of living crisis, in response to the pre-action protocol, and that no evidence had been presented by the Respondent to indicate that the arrears of rent were wholly or partly a consequence of a delay or failure in payment of a relevant benefit. The Tribunal noted that the Respondent had paid no rent at all since September 2022 and that she has

not responded to numerous attempts by the Applicant to engage with her in relation to the arrears.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order.

The Tribunal's Decision 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.

George Clark

Legal Member/Chair

24 August 2023
Date