



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/23/0787

Re: Property at 70 Spruce Road, Abronhill, Cumbernauld, Glasgow, G67 3DR (“the Property”)

Parties:

Ms Sylvia Doyle, 27 Glen Lochay Gardens, Glasgow, G68 0DY (“the Applicant”)

Ms Chloe Cameron, 70 Spruce Road, Abronhill, Cumbernauld, Glasgow, G67 3DR (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 12A of Schedule 3 the Private Housing (Tenancies) (Scotland) Act 2016 and Schedule 2 of the Cost of Living (Tenant Protection) Scotland Act 2022 in that the Respondent is in substantial rent arrears at the property over a period and the cumulative total of rent arrears exceeds an amount equivalent to 6 months’ rent due under the agreement at the time the Notice to Leave was served and the Tribunal is satisfied it is reasonable to issue an eviction order. The Tribunal made no order in respect of Ground 14 of Schedule 3 of the 2016 Act.

The Decision of the Tribunal was unanimous.

Background

1.This application for an eviction order in terms of Rule 109 of the tribunal rules of procedure was first lodged with the tribunal on 10th March 2023 And accepted by the tribunal on 27th March 2023. A case management discussion was fixed for the 24th of May 2023 at 2:00 pm.

Case Management Discussion

2. The case management discussion was attended by Miss Baxter solicitor of Mellicks solicitors on behalf of the Applicant. There was no appearance by or on behalf of the Respondent. The tribunal members noted that the application, supporting papers and the date of the case management discussion had been intimated to the Respondent by Sheriff Officers placing the papers through the letterbox at the property on the 24th of April 2023. The tribunal members were satisfied that fair notice had been given to the Respondent and that the case management discussion could proceed in her absence.

3. The tribunal had sight of the application, a paper apart, a private residential tenancy agreement, a Notice to Leave, an e-mail intimating the Notice to Leave to the Respondent, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to North Lanarkshire Council, rent statements, a title sheet, a mandate from the joint owner of the property authorising the Applicant to act on his behalf, a letter from North Lanarkshire council to the Applicant, texts between the Applicant and the Respondent, a number of emails in respect of pre action protocols and around the time of the start of the case management discussion the tribunal received a text message sent to the landlord by the Respondent some two days before the case management discussion.

4. The application sought eviction in terms of Grounds 12A and 14 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, these grounds being that the tenant is in substantial rent arrears at the property and that the tenant has engaged in relevant anti-social behaviour. Miss Baxter advised the tribunal that she was seeking an eviction order on Ground 12A only and was no longer seeking an order under Ground 14.

5. The Tribunal noted that the eviction ground being relied on was not affected by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 as far as delay in enforcement of any order which might be granted as Ground 12A in paragraph 1(5) of Schedule 2 of the 2022 Act excludes this ground and certain other grounds from the delay provisions.

6. The parties had entered into a private residential tenancy at the property with effect from 23rd December 2019 with monthly rent payable in the sum of £350.

7. Miss Baxter advised the tribunal it had come to light via text message received by the Applicant late on the evening of Monday 22nd May that the Respondent may have left the property and had posted keys back through the letterbox. The tribunal had been sent the text message which said, "Just to let you know I have left the property keys through the door" and was signed "Chloe".

8. Miss Baxter advised the tribunal that her client had gone to the property to check and had found that personal belongings appeared to have been removed but items of furniture were still in place. On 22nd May 2023 the tribunal had granted a payment order in a separate application in respect of rent arrears, and this was in the sum of

£7322.08. Additional rent had fallen due since the 22nd of May in the sum of £350. Miss Baxter submitted that the current arrears balance was £7672.08.

9. Miss Baxter advised the tribunal that in terms of the conduct of the tenancy the last payment made personally by the Respondent had been in September 2021 and that rent arrears now stood in excess of 21 months' rent. Universal Credit payments were being paid monthly in a sum less than £40 and the rent arrears were increasing month by month. The landlord considered that she had done all she could in her efforts to assist the Respondent. There had been no engagement by the Respondent and no offer to pay the arrears and an apparent refusal to pay rent. On the question of the Respondent having left the property, Miss Baxter indicated that she may have left the property but although one set of keys had been issued, others could have been cut and she had advised the Applicant landlord that if the Respondent was essentially giving notice that she was leaving the tenancy she had the rights of a tenant for a further 28 days. Miss Baxter submitted that the text was not entirely clear and the fact that furniture had been left at the property suggested that the Respondent might try to return and would have the right to re-enter. The Respondent had in the past refused requests for inspections of the property. It was the intention of the landlord to try to contact the Respondent to attempt to make arrangements for her to uplift furniture and any other items left at the property Miss Baxter submitted that on the basis of this information an eviction order was necessary.

10. As far as the Respondent's personal circumstances were concerned it was known that she has two children of primary school age. When she first entered into the tenancy she had been working as a dental technician and it was then known that she had started training to become a paramedic. The landlord had no current information regarding her work situation but understood since partial Universal Credit appeared to be being received towards the rent that she might be working but it was not clear where she was working. There was no suggestion that rent arrears had accrued due to the failure or delay in payment of a relevant benefit.

11. Miss Baxter pointed to the fact that the Notice to Leave had been properly served giving appropriate notice when the rent arrears had reached a sum in excess of £6000, far more than the equivalent of six months' rent which would have been £2100. Miss Baxter pointed to the various pre action protocol letters sent by the landlord to the Respondent pointing out the level of accumulated rent arrears but also signposting her to sources of support. Miss Baxter indicated that the landlord was not aware of any health issues suffered by the Respondent or by any member of her family. It was not clear where they were currently living but Miss Baxter was aware of an address which had been given at the start of the tenancy which was thought to be the Respondent's mother's address. She expressed concern that if the tribunal dismissed the application and did not grant the order and the Respondent attempted to return to the property, she might have the entitlement to do that, and the Applicant would require to lodge a fresh application. This was the only property rented out by the Applicant and the Applicant could simply not continue to sustain the level of rent arrears accumulated in this tenancy.

12. The tribunal had sight of a Notice to Leave dated 6 January 2023 which appeared to be in appropriate terms and advised the Respondent that an application would not be made to the tribunal before the 6th of February 2023. The tribunal also had sight of

a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 which had been sent to North Lanarkshire council in respect of the application. The Tribunal also had sight of a number of pre action protocol letters sent to the Respondent.

13. The tribunal considered it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The parties entered into a private residential tenancy agreement at the property with effect from 23rd December 2019.

15. Monthly rent due in terms of the tenancy agreement is £350 per calendar month.

16. Rent arrears started to accumulate in terms of the tenancy agreement in 2021 and the last rent paid directly by the Respondent was in September 2021.

17. Rent arrears have continued to accrue in terms of the tenancy agreement and sums of less than £40 per month have been paid by Universal Credit towards the rent each month since July 2022.

18. As at the date of the case management discussion accrued rent arrears stand at £7672.08.

19. Rent arrears in terms of the agreement have not accrued as a result of any delay or failure in the payment of a relevant benefit.

20. The Respondent is in substantial rent arrears at the property, and these accrued over the period since February 2021, and the arrears exceeded the equivalent of six months' rent at the time that the Notice to Leave was served In January 2023.

21. It is understood that the Respondent has two primary school age children and is working although the nature of her work is unknown

22. A Notice to Leave dated 6 January 2023 was emailed to the Respondent giving notice that an application would not be made to the tribunal for an eviction order before the 6th of February 2023 and setting out the grounds on which an eviction order was to be requested.

23. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to North Lanarkshire council by e-mail on 9th February 2023 in respect of this application.

24. A number of letters were sent to the Respondent between August 22 and January 2023 by the Applicant in terms of pre action protocol requirements setting out the level of rent arrears and signposting her to sources of support.

25. The Respondent sent a text message to the Applicant on 22nd May 2023 indicating that she had left the property and put the keys through the door.

26. The Applicant has attended the property to check it and found a set of keys at the property but noted that furniture belonging to the Respondent remains at the property.

Reasons for Decision

27. The Tribunal required to consider whether this application was necessary in the light of information it was given that two days before the case management discussion the Respondent had text the Applicant to say that she had left the property and had put keys through the door there. The Applicant had attended and noted that personal belongings appeared to have been removed but furniture remained. The text message sent by the Respondent gave no indication as to her intentions regarding the furniture and there was some uncertainty as to whether she intended to return to collect it and indeed whether she had access to another set of keys although only one set of keys had been issued at the start of the tenancy. Given that there was conflicting information as to whether the Respondent was still in occupation at the property, on the one hand having indicated that she had left and leaving keys at the property but on the other leaving furniture there, the Tribunal took the view that it was appropriate to consider whether an order should be made and whether the eviction ground was made out and it was reasonable to grant such an order so that consideration could be given to bringing the tenancy to an end in accordance with the requirements of legislation as appropriate.

28. The Tribunal considered the eviction ground on which the application was based, noting that an order was being sought only in terms of Ground 12A, substantial rent arrears and not ground 14, engaging in relevant anti-social behaviour although both grounds were referred to in the Notice to Leave. Rent arrears had been accruing at the property for some 21 months with no engagement by the Respondent and no information being given to the Applicant as to why this was the case. At the time of service of the Notice to Leave rent arrears had accrued in a sum exceeding £6000 in an agreement with monthly rent of £350, and as at the date of the case management discussion these had continued to rise and now stood at a sum an excess of £7000. There was a history of complete lack of engagement by the Respondent with attempts by the landlord to engage in discussion regarding the arrears. The Respondent did not attend the case management discussion. The Respondent's circumstances were largely unknown other than that she has two children, and it is not known where she is currently living. Given the circumstances in this application which included sustained rent arrears over a lengthy period which continued to accumulate without any explanation the tribunal took the view that the eviction ground was made out and it was reasonable to grant the order in terms of Ground 12A.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 12A of Schedule 3 the Private Housing (Tenancies) (Scotland) Act 2016 and Schedule 2 of the Cost of Living (Tenant Protection) Scotland Act 2022 in that the Respondent is in substantial rent arrears at the property over a period and the cumulative total of rent arrears exceeds an amount equivalent to 6 months' rent due under the agreement at

the time the Notice to Leave was served and the Tribunal is satisfied it is reasonable to issue an eviction 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.

Valerie Bremner

Legal Member/Chair

24.5.23

Date