



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/23/2323

Re: Property at 0/1 75 Glanderston Drive, Glasgow, G13 3UG (“the Property”)

Parties:

Mrs Narinder Burmy, 188 Southbrae Drive, Glasgow, G13 1TX (“the Applicant”)

Miss Ashley Stewart, 0/1 75 Glanderston Drive, Glasgow, G13 3UG (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 12th July 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent and provided with her application copies of the private residential tenancy agreement, notice to leave with proof of service by e-mail, section 11 notice with proof of service, rent arrears statement, rent increase notice and pre-action protocol correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016* and the *Coronavirus (Scotland) Act 2020*, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 24th November 2023, and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal dated 13th December 2023, the Respondent explained that she had suffered a number of family bereavements and health issues, which had caused her to fall behind with her rent. She indicated her willingness to repay the arrears.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 19th January 2024 by Tele-Conference. The Applicant did not participate, but was represented by Ms McCulloch, letting agent. The Respondent did not participate, nor was she represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Ms McCulloch invited the Tribunal to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. At the date of the notice to leave of 6th March 2023, rent arrears were £1,800.00. As of 19th January 2024, the rent arrears had risen to £3,705.00. The Respondent had made sporadic part payments, but the level of arrears continued to rise.

The pre-action correspondence produced showed various attempts to contact the Respondent asking her to make contact with the Applicant in order to discuss options to assist her with her rent arrears and advising her about where she might obtain advice. The Respondent had generally failed to engage with the Applicant's agent in response to those.

The notice to leave relied on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £500.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. By agreement, the parties had reduced that figure to £475.00 until 29th November 2022 when it was raised to £525.00. The Respondent had been in arrears since 6th February 2021 and so had been in arrears of rent for a continuous period of more than three consecutive months.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact 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 in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order, albeit she did explain her circumstances and the reason for her accumulating rent arrears.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondent has failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

Decision

In these circumstances, the Tribunal made an eviction order as sought in this application.

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.

N Kinnear

19th January 2024

Legal Member/Chair

Date