



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/23/2530

Re: Property at 114 Flat 2/B Meadowfoot Road, West Kilbride, KA23 9BZ (“the Property”)

Parties:

Mr David Murphy, 33 Lumsden Place, Stevenston, KA20 4HF (“the Applicant”)

Miss Angela Meehan, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (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 12 A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that at the date of service of the notice to Leave and as at the date of the hearing the tenant has accrued substantial rent arrears in excess of 6 months’ rent due in relation to the tenancy agreement and it is reasonable to grant an eviction order.

Background

1. This application for an eviction order was first lodged with the tribunal in terms of rule 109 of the tribunal rules of procedure on 27th of July 2023 along with a related application for a payment order with reference HPC.FTS.CV.23.2531. The applications were accepted by the Tribunal on 26th September 2023. A case management discussion was fixed in relation to both applications for 18th December 2023 at 2:00 pm.

2. Case management Discussion

The case management discussion was attended by Mrs Black, solicitor of Taylor and Henderson solicitors. Saltcoats. There was no appearance by it on behalf of the Respondent Angela Meehan. Attempts to serve the Tribunal application and papers on the Respondent by sheriff officers had been unsuccessful, a neighbour reporting that the Respondent had not lived at the property for over a year, when sheriff officers attended the property in November 2023. The tribunal had sight of a certificate indicating that the application had been served by advertisement on the tribunal's website with effect from 22nd November 2023. The tribunal was therefore satisfied that appropriate notice had been given to the Respondent within the tribunal rules and the applications could proceed in the absence of the Respondent.

3. The tribunal had sight of the application, a paper apart, a tenancy agreement, a Notice to leave, an execution of service of the notice to leave by Sheriff officer, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a letter intimating this to North Ayrshire Council, a series of emails, a letter from the joint owner of the property giving consent to the Applicant to deal with matters, a rent statement, a series of letters with payment history, text messages from the Applicant to the respondent and details of the landlord's registration.

4. The parties had entered a tenancy at the property on the 1st of October 2021 with monthly rent payable of £350 payable on the second of each month. It was accepted that although this tenancy was in the form of a short, assured tenancy having been created in 2021 it is a private residential tenancy. The Respondent immediately failed to pay rent for the first month of the tenancy. The Applicant contacted the Respondent by letter and requested that the outstanding rent was paid by 1st December 2021. The Respondent assured the Applicant the rent would be repaid but since that date only sporadic payments were made to the Applicant in terms of rent. On 13th August 2022 the Respondent paid the rent covering July, August and September 2022. No rent has been paid since 2nd October 2022. The rent arrears accrued in terms of the tenancy agreement as of September 2023 are £4200.

5. Mrs Black advised the tribunal that the Applicant had attempted to resolve the issue of rent arrears and had visited the property on a number of occasions and attempted to contact the Respondent by phone and text. He had received no response and was unable to find the Respondent at the property. The Applicant was not able to ascertain on his visits whether the Respondent remained in occupation at the let property and if she was still living there. She still retained keys to the property. The Applicant was not able to obtain any information by looking through the windows at the property on his visits. Mrs Black was of the view that the Respondent was no longer resident at the property and this view was based on information received from the tribunal when Sheriff officers were unable to serve the tribunal application and papers, having been advised by a neighbour that the Respondent had not been in residence for over a year. Mrs Black had no other information to support the assertion that the Respondent was no longer an occupation at the property.

6. The tribunal had sight of a Notice to Leave in proper form dated 27th March 2023, served on the Respondent at the property address on 29th March 2023, and giving notice that the landlord would not apply to the tribunal before 1st May 2023. This Notice to Leave indicated that eviction was being sought on the grounds that the Respondent

no longer occupying the property and substantial rent arrears equivalent to six months' worth of rent had accrued.

7. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to North Ayrshire council in respect of this application in May 2023.

8. The tribunal members asked Mrs Black whether the Applicant had complied with pre-action protocols in relation to signposting of the Respondent to sources of advice and support in the event that she was in financial difficulty. Mrs Black pointed to the fact that the Applicant had tried to contact the Respondent on many occasions to discuss the rent arrears but had simply received no response after the last payments in the autumn of 2022. He had assisted her at the start of the tenancy by transferring the tenancy into her name and during the tenancy allowing her to have the deposit used towards one month's rent arrears. Mrs black submitted that it would not have been reasonable for the Applicant to send pre action protocol letters to the Respondent over an extended period when she simply was not responding to him, so he did not know what her situation was. At least one text from the landlord to the Respondent sent in January 2023 he indicated that he was in a financially difficult situation and required the property back.

9. There was discussion as to the information available to the tribunal in relation to eviction ground 10, that the Respondent is no longer an occupation at the property. Mrs black accepted that there was no information to support this other than the report by sheriff officers received from the neighbour at the property that the Respondent was not in residence at the property and had not been for some time. After discussion Mrs Black indicated that she wished to proceed in terms of ground 12A only, substantial rent arrears amounting to at least 6 months' rent.

10. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The parties entered into a private residential tenancy at the property with effect from 1st October 2021.

12. The monthly rent payable in respect of the tenancy is £350 payable in advance by the 2nd of each month.

13. Early in the tenancy the Respondent started to accrue rent arrears and no rent has been paid in terms of the tenancy agreement since October 2022.

14. At the time that the Notice to Leave was served on the Respondent on 29th March 2023 rent arrears of £2100 had accrued in terms of the tenancy agreement, equal to six months' rent due in terms of the agreement.

15. As of September 2023 rent arrears in terms of the tenancy agreement stand at £4200.

16. A notice to leave dated 27th of March 2023 was served on the Respondent at the property address on 29th March 2023 giving notice that an application for an eviction order would not be made to the tribunal prior to 1st May 2023 and setting out that eviction would be sought in terms of Ground 10, the tenant not occupying the property as their home, and Ground 12A, substantial rent arrears.

17. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to North Ayrshire council in May of 2023 in relation to this application

18. Over the course of the tenancy the Applicant has attempted to contact the Respondent regarding the rent arrears on many occasions by telephone call, text message or by visiting the property.

19. The Applicant has had no contact from the respondent since the autumn of 2022 when rent was last paid in terms of the agreement.

20. It is not clear if the Respondent is still in occupation at the property, but she still holds keys to the property and has never advised the applicant that she has moved out.

21. The Respondent has accrued substantial rent arrears in terms of the tenancy agreement which by September 2023 had reached the equivalent of 1 years' rent in terms of the tenancy agreement, being £4200.

Reasons for Decision

22. The tribunal was satisfied that the appropriate procedural steps were taken in this application. A Notice to Leave in proper form had been served at the property address as the Applicant was entitled to do, and a section 11 Notice had been properly submitted in relation to this application. The tribunal was also satisfied that the eviction ground had been made out given that rent has not been paid at the property for over a year. The tribunal had little information regarding the circumstances of the Applicant or the Respondent. The Respondent remained in possession of keys to the property, had not advised the Applicant that she was leaving the property but had not been seen there for some considerable time. The applicant had made numerous attempts to contact her in relation to the rent arrears all of which had been met without a response of any kind since the autumn of 2022. Although the tribunal did not have sight of pre-action protocol letters to the Respondent signposting her to sources of assistance or support the tribunal did not consider that this was fatal to the application given its particular circumstances.

23. The tribunal noted that this application was not affected by the Cost of Living (Tenant Protection) Scotland Act 2022. Having regard to all of the information before it, the tribunal considered that it was reasonable to grant an eviction order.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 12 A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that at the date of service of the notice to Leave and as at the date of the hearing the tenant has

accrued substantial rent arrears in excess of 6 months' rent due in relation to the tenancy agreement and it is reasonable to grant 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.



Legal Member/Chair

18.12.23

Date