



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/23/0953

Re: Property at 24 Sime Place, Galashiels, TD1 1ST (“the Property”)

Parties:

Waukrigg Development Company Ltd, 21 Market Street, Galashiels, TD1 3AD (“the Applicant”)

Mr William Derek Chapman, residing at 24 Sime Place, Galashiels, Selkirkshire, TD1 1ST (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an Application for an eviction order in regard to a Private Residential Tenancy (“PRT”) made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (“the Rules”). The PRT is between the Parties and relates to the Property. The tenancy commenced on 26th November 2021.
2. The Application was dated 23rd March 2023. This makes the Application subject to the Cost of Living (Respondent Protection) (Scotland) Act 2022.
3. The application relies upon a Notice to Leave dated 25th January 2023, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email on 25th January 2023, all in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that “the tenant has been in rent arrears for three or more consecutive months”. The Notice to Leave intimated that an application to the Tribunal would not be made before 25th February 2023.

4. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon Scottish Borders Council on 22nd March 2023.
5. The Application papers also included letters from the Applicant's agents dated 13th December 2022 and 16th December 2022 addressed to the Respondent in which the Applicant sought to provide the Respondent with information and advice in relation in compliance with the pre-action protocol prescribed by the Scottish Ministers.

Case Management Discussions

6. The matter called for a first Case Management Discussion ("CMD") of the First-tier Tribunal for Scotland, Housing and Property Chamber, conducted by remote telephone conference call, on 10th October 2023. The Applicant was represented on that call by their solicitor, Mr Steven Robertson. The Respondent also joined the conference call. That CMD was adjourned to allow the Applicant to amend their application (should they so wish) to include another ground for eviction and make arrangements for a further set of the Application papers to be served upon the Respondent.
7. The matter called for a second CMD on 22^{ns} January 2024. The Respondent joined the CMD by conference call. The Applicants were again represented on the conference call by their solicitor Mr Steven Robertson.
8. The Respondent confirmed to the Tribunal that he had received the application papers from the Tribunal.
9. Following a further discussion at the second CMD the Applicant decided not to seek any amendment to the application and decided to continue to seek an eviction order under the terms of Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that "the tenant has been in rent arrears for three or more consecutive months".
10. In advance of the second CMD the Applicants had lodged an updated rent statement in relation to the tenancy between the parties. That statement showed a balance of rent due by the Respondent in the sum of £12000 and further showed that the no rent had been paid by the Respondent for a period of 16 months.
11. At the second CMD, Mr Robertson confirmed that the Applicant continued to seek an order for eviction. He explained that the Respondent had not paid rent in terms of the Tenancy Agreement for a period of 16 months. The Respondent had accrued arrears of rent of £12000 as at the date of the second CMD. The Respondent had, accordingly, been in rent arrears for three or more consecutive months.
12. The Respondent confirmed that he had not paid the rent for the Property for the period of 16 months. He confirmed that he accepted that the rent he was due to pay in terms of the Tenancy Agreement between the parties was £750 per month and that he had accrued rent arrears in the sum of £12000 as at the date of the second CMD.

Findings in Fact and Law

13. The Applicant is the owner of the Property.
14. The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 26th November 2021 ("the Tenancy"). The rent charged under the tenancy agreement was, and remains, at £750 per month.
15. The Applicant has issued a Notice to Leave dated 25th January 2023 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email dated 25th January 2023.
16. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 23rd March 2023.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Scottish Borders Council on the Applicant's behalf on 22nd March 2023..
18. The respondent has been in rent arrears for three or more consecutive months. He is not currently in a position to pay ongoing rent or to make payments to the arrears of rent which have accrued.
19. It is reasonable to issue an eviction order.

Reasons for Decision

20. The Tribunal were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
21. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made by the parties. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.

22. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:

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

and that...

(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.

23. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. The Respondent has not paid his rent for 16 months and has accrued arrears of £12000. This was accepted by the Respondent. On that basis the Tribunal determined that paragraphs 3(1) of Ground 12 was satisfied.

24. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph 3(2) of Ground 12.

25. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

26. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

27. In this case the tribunal finds that it is reasonable to grant the order.

28. At the CMD explained that he had moved into the Property in December 2021. The rent due in terms of the tenancy agreement between the parties is £750 per month. The Respondent lives alone in the two bedroom property. In 2022 the Respondent had approached the applicant to discuss whether the rent could be reduced. No agreement could be reached in that respect. The tenant attempted to find alternative properties to let, but the applicants failed to provide him with a reference and accordingly he was unable to take forward offers of alternative private lets. He chose to stop paying rent towards the start of 2023. The Respondent's income is his state pension of approximately £820 per month. He is not able to pay the current rent. He has looked at alternative properties and has been in contact with the local authority to determine whether they can offer him alternative housing. He has sought advice and assistance from a solicitor and the Citizens Advice Bureau. The Respondent explained to the Tribunal that he considered that he was entitled to or over £1 million from a bank with whom he was in dispute.

He did provide any evidence to support that claim. The Respondent accepted that he is not currently in a position to pay ongoing rent or to make payments to the arrears of rent which have accrued.

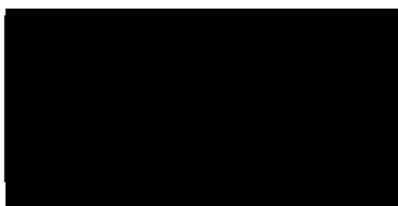
29. The applicant wishes to recover possession of the property because of the level of rent arrears which have been accrued by the Respondent. The tenant has not made any payments of rent for 16 months and the applicants cannot afford to allow the respondent to continue to live in the property whilst no rent has been paid.
30. The Tribunal consider that it is reasonable to grant the eviction order. There is little or no prospect, that the tenant is going to be able to afford to pay the arrears of rent which have accrued, or ongoing rent in the future. It is not reasonable to require the Applicant to maintain the Lease between the parties in these circumstances.
31. The balance of reasonableness is weighted towards the Applicant.
32. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

33. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
34. The decision of the Tribunal is 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.



Legal Member/Chair

22nd January 2024

Date

