



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/3570

Re: Property at 1 Antonine, Kirkintilloch, G66 2UL (“the Property”)

Parties:

Miss Lily Wall, 50 Shardlow Lopp, Cairne, Perth, Western, Australia, WA6020, Australia (“the Applicant”)

Miss Shannon Miller, Coda Estates, 2-4 Heath Avenue, Lenzie, G66 4LG (“the Applicant’s Representative”)

Miss Ashleigh Muir, 1 Antonine, Kirkintilloch, G66 2UL (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

1. This is an application for recovery of the Property. The application is dated 10 October 2023. The Applicant is seeking recovery under Ground 12, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that a tenant has been in rent arrears for three or more consecutive months.
2. A case management discussion was held by teleconference on 26 February 2024. Miss Shannon Miller of Coda Estates, letting agents, represented the Applicant who was not in attendance. There was no appearance by the Respondent and the tribunal had sight of a Sheriff Officer’s Certificate of

Intimation confirming that notice of the case management discussion had been served on the Respondent on 10 January 2024.

3. No written representations had been submitted by either party.

Preliminary Matters

4. Miss Miller said that, in connection with the arrears of rent, letters had been sent to the Respondent but she had not responded. Miss Miller said that the letters satisfied the Applicant's obligation to have regard to the pre-action protocol in terms of Scottish Government Regulations. It was pointed out to Miss Miller that copies of these letters had not been submitted with the application.
5. After a short adjournment, during which Miss Miller submitted copies of letters sent to the Respondent, the case management proceeded.
6. Miss Miller said that the current level of rent arrears was £2377.17. She said that the monthly rental was £700 and that Universal Credit paid the sum of £595 direct to the letting agent and a further monthly sum of £36.87 was paid to reduce the arrears of rent. She said that the Respondent does not pay the £105 monthly shortfall between what is received from Universal Credit and the rent.
7. Miss Miller said that, although the private residential tenancy agreement was dated 2 July 2018, the Respondent had resided in the Property since 16 August 2017 as a joint tenant. She said that the Respondent's partner left the Property and she then entered into a sole tenancy agreement.
8. Miss Miller submitted that the application could be determined without a Hearing since the tribunal had all the necessary information to make a decision.
9. The tribunal decided that it had sufficient information to determine the application and that there was no requirement for a Hearing to be arranged.

10. Documents before the tribunal

- 7.1 Private Residential Tenancy Agreement dated 2 July 2018 between the Applicant and the Respondent showing the start date of the tenancy to be 12 July 2018 and the monthly rent to be £700.
- 7.2 Copy Notice to Leave dated 21 August 2023 and copy email confirming that it was served on that date.
- 10.3 Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 and dated 4 October 2023.
- 10.4 Rent arrears statement dated August 2023 showing the arrears of rent to be £2005.26.
- 10.5 Print of Title Sheet for DMB17918 (the Property).

10.6 Email and letters from Coda Estates to the Respondent dated 27 September 2023, 3 November 2023, 22 December 2023 and 16 January 2024.

11. Findings in Fact

8.1 The Applicant is the owner of the Property.

8.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property with the tenancy commencing on 2 July 2018.

11.3 The monthly rent for the Property is £700.

11.4 As at the date of the Notice to Leave, the rent arrears amounted to £2005.26.

11.5 The Notice to Leave which was dated 21 August 2023 referred to Ground 12 and stated that it was being relied on by the Applicant as the reason for seeking recovery of the Property.

11.6 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 9 October 2023.

11.7 Proceedings for eviction commenced with submission of the application dated 10 October 2023.

12. Finding in Fact and Law

12.1 The Respondent has been in rent arrears for three or more consecutive months.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

S.51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3, Part 1Ground 12

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4) (b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

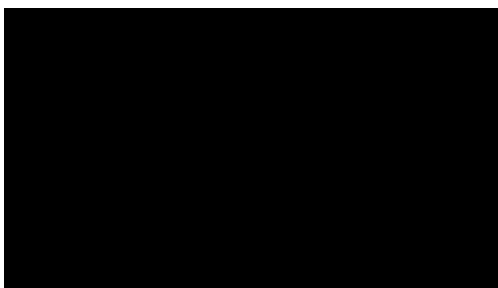
Deliberations and Reasons

13. The tribunal had regard to the rent statement. The rent is £700 per month and, at 4 August 2023, the level of rent arrears was £2005.26 which represented arrears equivalent to an amount equivalent to almost three months' rent. The statement also demonstrated that the rent arrears have accrued since 2 September 2022 and that, at the date the Notice to Leave was served, the Respondent had been in arrears of rent for over twelve months
14. The tribunal was satisfied that the rent arrears were substantial and had been when the application was made. It accepted Miss Miller's representation that the current level of rent arrears was £2377.17.
15. The tribunal was satisfied that the notice to leave was in order and that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.
16. The tribunal was satisfied that the Applicant is the owner of the Property, is the landlord in terms of the private residential tenancy agreement and is therefore entitled to make the application for an order of eviction.
17. The tribunal considered that it required to take a two stage approach in considering the application. Having determined that Ground 12 is met, it then requires to have regard to sections (4), (5) and (6) of Ground 12.
18. The tribunal was satisfied that the landlord had sent the necessary communications in terms of the pre-action protocol. The four letters from Coda Estates to the Respondent demonstrated this. Miss Miller said that the letter dated 3 November 2023 referred to the Respondent failing to comply with a payment plan. She said that the Respondent had agreed to deal with the arrears and pay the monthly shortfall but had failed to do so. She said that the Respondent had not engaged with the Applicant in this regard and had not responded to attempts by employees of Coda Estates to discuss matters with her.

19. Miss Miller said that the reason that the rent had not been paid in full had nothing to do with any issue about the Respondent failing to get paid benefits or any benefits being paid late. She said that Universal Credit pays the sum of £595 per month towards the rent.
20. Miss Miller said that, in the past, the Respondent had explained her non-payment as being a result of illness, the fact that she was going through difficult times and issues following the separation from her partner.
21. Miss Miller said that the Respondent lives in the Property with her son who is probably four or five years old. She said that the Property has three bedrooms and that this would mean that Universal credit would not provide full support for the rent because the Respondent only requires a two bedroom property.
22. Miss Miller said that the Applicant does not have any other buy to let properties. She said that the Applicant lives in Australia and that the rent is needed to support her living expenses there.
23. In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. It is a balancing exercise. The Respondent had chosen not to engage with the Tribunal process and had not submitted written submissions or participated in the case management discussion. The information the tribunal had about her personal situation was limited. The level of rent arrears was considerable and the tribunal had no difficulty in finding that this would be causing financial prejudice to the Applicant. The Respondent has a contractual obligation to pay rent and has not done so over a considerable number of months.
24. The tribunal took into account the amount of the rent arrears, the period of time over which they had accrued and the fact that the Applicant's finances are being adversely affected. It also took into account that the Property is the home of the Respondent and her son. In weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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
26 February 2024