



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/23/3140

Re: Property at 1 The Waterhouse, 35 Old Largs Road, Greenock, PA16 9AR (“the Property”)

Parties:

Alex Ewing, 12 Caddlehill Street, Greenock, Inverclyde, PA16 8TU (“the Applicant”)

Michelle Brandt, 1 The Waterhouse, 35 Old Largs Road, Greenock, PA16 9AR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) 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 in question was by the Applicant to the Respondent but never signed. The Applicant said it commenced on 3 January 2022, and that the Applicant had signed a standard PRT Tenancy Agreement and provided it to the Respondent for signing at a meeting on 6 January 2022, but she then refused to sign.
2. The application was dated 5 September 2023 and lodged with the Tribunal on 7 September 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022* though as the eviction was sought under Ground 12A, there were no additional requirements under that Act.

Further, though the said Act will have expired by the time of any eviction under the order sought, the saving provisions still permit us to grant an eviction under Ground 12A.

3. The application relied upon a Notice to Leave said to be dated 8 August 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, but intimated upon the Respondent by the Applicant himself, in front of a witness, on 7 August 2023. (Submissions on this discrepancy were given at the case management discussion (“CMD”) and are recorded below.) The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act and the body of the notice referred to the tenant having “missed 6 months rent = £5100” (*sic*) and “Rent is £850 a month”. The Notice intimated that an application to the Tribunal would not be made before 5 September 2023.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Inverclyde Council on 5 September 2023 was provided with the application. There was no evidence in the application papers of the Applicant providing pre-action protocol information in standard form to the Respondents though we were addressed on this at the CMD.

The Hearing

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 October 2023 at 14:00. We were addressed by the Applicant. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant stated that he had not spoken with the Respondent since 6 January 2022 and, though she has had legal advisers in regard to other applications before this Chamber, none of her advisers or solicitors had addressed the rent arrears (and so this application). He said that Police had been called to the Property on occasion, most recently the previous day, and the Respondent had told the Police that she did not speak to the Applicant. (We noted from the decisions and CMD notes in other applications made reference to poor relations between the parties, but we do not comment on the accuracy of that or on which side any blame may lie for any poor relations.)
7. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until after 14:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD and we concluded the CMD after 15:05 with no contact from the Respondent.
8. At the CMD, the Applicant confirmed that the application for eviction was still insisted upon and referred to the current arrears being £11,050 being unpaid rent from 3 March 2023 until present (11 months). He made submissions on a number of conflicts with the Respondent, and the background relevant to his

application. In summary, we noted the following salient points that the Applicant sought to rely upon:

- a. The Property was constructed, along with others on the site, between the Applicant and his business partner. It is a five bedroom property. The Applicant took ownership of it, intending to make it his family home, but then he and his partner changed their mind. The Applicant then decided he would market it for sale, and use the proceeds to assist in his retirement.
 - b. By that time, the Property had been mortgaged and the monthly payments were £550/month.
 - c. The Applicant was introduced to the Respondent through a neighbour in late 2021. The Respondent was living with the neighbour temporarily. In conversation between the parties, the Applicant referred to the Property and his intention to sell, and the Respondent expressed a desire to rent the Property instead. The Applicant agreed to rent to the Respondent at £850/month.
 - d. The Respondent was provided with keys, and started to move in, before any Tenancy Agreement was provided to her to sign. The start date of the Tenancy was agreed to be 3 January 2022. Parties discussed that the Applicant would return on 6 January 2022 to have the Tenancy Agreement signed.
 - e. The Applicant prepared a standard PRT style of Tenancy Agreement and attended at the Property on 6 January 2022 having signed it on his behalf already. The Respondent read the document and objected to the limitations on keeping pets and prohibition on sub-letting (as she said she had pets, and intended to let out rooms). The Applicant denied knowing of either of these matters prior to 6 January 2022 and said that he had not spoken since with the Respondent.
 - f. There have been a number of applications to the Chamber by the parties, some raised by the Respondent against the Applicant and vice versa. Issues regarding repairs, the terms of the Tenancy Agreement, and the deposit have been raised by the Respondent. The Applicant has sought access for repairs.
 - g. In regard to breaches of the Tenancy Agreement, the Respondent paid rent of £850/month from 3 January 2022 until 3 February 2022. Around that point the Applicant recalls he had his solicitor write to the Respondent to ask her to stop sub-letting rooms. (The Applicant was aware of the Respondent having posted up an advertisement for "rooms for rent" within the Inverclyde Royal Infirmary. The advertised rent was £100/week.) No further rent payments were then made by the Respondent, but the Applicant has never received any explanation why the payments stopped, nor any dispute about payment of the rent.
 - h. The Applicant said that the Respondent is keeping the Property in poor condition, and referred to broken windows at the rear (for which the Police have been called on more than one occasion).
 - i. He said that the Respondent never paid her Council Tax, and at first he was chased for payment. He believes she is not paying utilities either.
9. We asked the Applicant about the Respondent's personal and financial circumstances. He said that he knew little about her but believed she had no

children nor dependents. In the past he understood that she lived away from the Property for two weeks at a time, working in England, but did not know about her employment currently. He was unaware of any claims for benefits or any issue arising with benefit that would affect payment of rent.

10. During the CMD, we asked the Applicant to explain why he said that the Notice to Leave was served on 7 August 2023 (and had lodged a witnessed statement on service to that effect) when the Notice was dated 8 August 2023. The Applicant responded by referring to the requirement for 28 days' notice and that he believed this was how he was to complete the document. (As the Notice to Leave said no action would be raised before 5 September 2023, there are exactly 28 days between 7 August and 4 September 2023, if you include 7 August.) We asked the Applicant why the partially signed Tenancy Agreement was not signed. He said that he did not think it was needed to support his application, given that it was in the standard form (implying that we would be aware of its terms).
11. We sought the Applicant's submissions regarding the pre-action protocol. He referred to a number of emails lodged with the application which referred to the arrears, or to the arrears and also recommended that the Respondent seek advice. (There were various references such as to "Citizens Advice" and "Shelter", and sometimes both, or that the Respondent should "seek help from some agency".) They all sought, in varying ways, to encourage the Respondent to contact the Applicant to discuss the arrears, and at least one referred to asking her to contact if she was in financial difficulties. The emails were dated 6 April 2023, 6 May 2023, 7 June 2023, 6 July 2023, and 6 August 2023. They were all reasonably short, and no one email covered the full points needed under the protocol. We did note, however, that a material amount of the protocol information is within the Notice to Leave style when the explanatory notes are considered. Further, the Applicant referred to (and we could see from the papers in other applications), that the Respondent has had advice from various providers on other tenancy matters. She was, at least, represented by Govan Law Centre at a hearing of 23 August 2023 (that is, during the time between the Notice was served and the application raised).
12. In regard to reasonableness regarding the Applicant's position, the Applicant described suffering health problems which he attributed to the stress of attending to the Tenancy, and financial problems due to the non-payment. He said the monthly mortgage payment was now £870/month, so more than the rent (which rent was not being paid in any case). He said that he has required to return to work in regard to the financial strain. He said that he still wished to recover the Property, to sell it, and use the funds towards being able to retire. He said he owned only one other Property, which was his home address.
13. In regard to reasonableness regarding the Respondent's position, the Applicant knew of no adaptation of the Property for the Respondent's use, nor of any reason that the Property was especially suitable for her needs (such as proximity to a source of support or work). He believed she currently resided alone in the five bedroom property.

14. No motion was made for expenses.

Findings in Fact

15. On or about 3 January 2022 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of that day (“the Tenancy”).
16. It was agreed between the parties that rent would be £850 per month, payable in advance from 3 January 2022.
17. On 7 August 2023, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she had been in continual rent arrears for 6 months, that arrears totalled £5,100, and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act (amongst other grounds). The Notice was post-dated 8 August 2023.
18. The Notice to Leave contained explanatory notes in standard form.
19. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 5 September 2023.
20. The Applicant, in front of a witness, personally served a copy of the Notice to Leave on the Respondent on 7 August 2023.
21. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act on 7 September 2023.
22. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Inverclyde Council by the Applicant on 5 September 2023.
23. The Applicant provided the Respondent with partial pre-action protocol information by way of emails on 6 April 2023, 6 May 2023, 7 June 2023, 6 July 2023, and 6 August 2023.
24. The Respondent has had legal representation in regard to tenancy issues since the date of the Notice to Leave, but it is not known if she has sought advice on this application.
25. As of 15 March 2024, the Respondent remained in arrears of rent in the amount of £11,050 being 13 months’ rent.
26. The Respondent does not claim to have paid any amount of the arrears of £11,050 remaining as at 15 March 2024.

27. The sum of arrears remaining as of 15 March 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
28. The Respondent has not made a payment against rent since 3 February 2023.
29. On 26 January 2024, the Tribunal intimated to the Respondent the date and time of the CMD of 15 March 2024 by Sheriff Officer.
30. The Respondent lives alone without any dependents.
31. The Property is a five bedroom property.
32. The Property is not specially adapted with the use of the Respondent.
33. The Property is not specifically suitable for the Respondent's needs due to location or its nature.
34. The Applicant wishes to sell the Property so as to address financial issues arising from increased interest rates, and so as to contribute to his retirement planning.
35. The Applicant seeks to discontinue being a landlord.

Reasons for Decision

36. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
37. Ground 12A of the said Schedule applies if:
 - (1) *It is an eviction ground that the tenant has substantial rent arrears.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
 - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order.*
 - (3) *In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

- (a) *whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
 - (b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*
- (4) *For the purpose of this paragraph—*
- (a) *references to a relevant benefit are to—*
 - (i) *a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*
 - (ii) *a payment on account awarded under regulation 93 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.*

38. The arrears information provided clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding as at the date of the Notice to Leave. Further, we were satisfied that it was fair to draw an inference from the facts presented to us that there is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. We were thus satisfied that Ground 12A was made out.
39. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicant to seek eviction given the amount, and the duration of the arrears. His reasons for wishing to cease being a landlord and to sell the Property were compelling. We found his submissions on reasonableness substantially in his favour. We are satisfied to grant the order sought under Ground 12A and are not minded to grant any additional suspension of the order to evict given the lack of information from or engagement by the Respondent.
40. We remain of this view in the absence of full compliance with the pre-action protocols. There has been partial compliance and it is clear that during the relevant period the Respondent has sought legal advice on the Tenancy (though we do not know if she chose to seek advice on the arrears and the threat of eviction). We were thus aware that the Respondent has had the benefit of the information in Notice of Leave (which covers many of the matters within a pre-action protocol letter), as well as having advisers, and has received a number of emails from the Applicant touching on matters within the pre-action protocol, and yet has failed to engage with the Applicant. The purpose of the

pre-action protocol has been fully addressed even if the Respondent has not taken the opportunities afforded to her to engage.

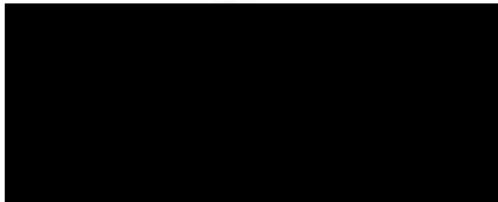
41. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

Decision

42. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 12A of Schedule 3 of that Act.

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.



15 March 2024

Legal Member/Chair

Date