



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/23/3852

Re: Property at 28 Nechtan Drive, Coalsnaughton, Tillicoultry, FK13 6DQ (“the Property”)

Parties:

Kingdom Initiatives Limited, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA (“the Applicant”)

Mr Scott Bell, 28 Nechtan Drive, Coalsnaughton, Tillicoultry, FK13 6DQ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Tony Cain (Ordinary Member)

Decision

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

Background

This was an application for an eviction order dated 31st October 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 its application copies of the private residential tenancy agreement, notice to leave with proof of service, section 11 notice with proof of service, rent arrears statement, 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 14th February 2024 and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 27th March 2024 by Tele-Conference. The Applicant did not participate and was represented by Miss Brecheny, solicitor. The Respondent participated and was not represented.

Miss Brecheny invited the Tribunal to grant the order sought on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. At the date of the notice to leave of 20th June 2023, rent arrears were £12,955.31. As of 27th March 2024, the rent arrears had risen to £15,666.12.

The pre-action correspondence produced showed various attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears and advising him about where he might obtain advice.

The notice to leave relied on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £520.65 per month was payable in advance in terms of clause 6 of the lease. The Respondent had been in arrears since 1st April 2021 and so had been in arrears of rent for a continuous period of more than three consecutive months. The amount of arrears exceeded an amount that is the equivalent of six months' rent.

The Respondent explained that he had suffered from an addiction issue which had caused him to not pay his rent and "stick his head in the sand". He had received treatment for that problem which was now under control. He realised the difficulty he was in resisting the granting of the order, but expressed the hope that if after it was granted he might agree a significant lump sum payment towards the rent arrears and a repayment plan for the rest, the Applicant might be willing not to enforce the order.

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 12A of Schedule 3 to the Act provides that it is an eviction ground that the tenant has substantial rent arrears. That ground applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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 that the Tribunal is satisfied that it is reasonable 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, and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that ground 12A had been established. The tenant was in substantial arrears of rent in respect of one or more periods and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on that ground. The Tribunal was 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 further satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Respondent did not dispute the level of arrears and recognised that the Tribunal would likely grant the order sought in the circumstances. That being so, the Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial.

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

Legal Member/Chair

Date: 27/03/2024