



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/23/4181

Re: Property at Dalmahoy Cottage, Dalmahoy, Kirknewton, EH27 8EB (“the Property”)

Parties:

Dalmahoy Farms, Dalmahoy Estate Office, Kirknewton, West Lothian, EH27 8EB (“the Applicant”)

Mr John Steven, Dalmahoy Cottage, Dalmahoy, Kirknewton, EH27 8EB (“the Respondent”)

Ms H Forbes (Legal Member) and Ms S Brydon (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 should be granted.

Background

1. This is an application for an eviction order made on 22nd November 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) under ground 12A of Schedule 3 of the Act. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties, which commenced on 4th March 2021 with a monthly rent of £750, a rent statement, section 11 notice with evidence of service, copy notice to leave with evidence of service, copy Tribunal decision and Order for Payment, and pre-action requirement correspondence.
2. Notification of the application and the forthcoming Case Management Discussion upon the Respondent was carried out by Sheriff Officers on 7th February 2024.
3. An updated rent statement showing arrears in the sum of £27,000 was lodged by the Applicant representative on 14th March 2024.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 20th March 2024. Mr Ruari Peoples was in attendance on behalf of the Applicant. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Mr Peoples said the Applicant had not had any recent correspondence from, or contact with, the Respondent. The Respondent had more than six months’ notice of the intention to apply for an eviction order, with a Notice to Leave served on 13th September 2023. This had allowed him ample opportunity to make other arrangements for accommodation. The arrears are beyond significant. Only one month’s rent has ever been paid, and the arrears constitute 36 months of unpaid rent. This is a significant loss to the Applicant.
7. Responding to questions from the Tribunal as to whether the Respondent was still occupying the Property, Mr Peoples said the Applicant had been informed by neighbours that the Respondent was visiting the Property briefly but may not be living there.
8. Responding to questions from the Tribunal regarding the circumstances of the Respondent, Mr Peoples said he was not aware of any vulnerabilities. It was not clear whether the Respondent is in employment. The Respondent has been living alone in the Property. Neither Mr Peoples or the Applicant have been contacted by any social housing providers in respect of any application for housing by the Respondent. There has been no recent notification from the Respondent to the Applicant that he is withholding rent. The Respondent has made no payment since an order for payment was granted by a Tribunal in August 2023. The Respondent stated at the hearing in respect of the payment order that he would not be making payment of any back rent.
9. Mr Peoples moved the Tribunal to grant the eviction order under ground 12A.

Findings in Fact and Law

10.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 4th March 2021 with a monthly rent of £750.
 - (ii) The Applicant has served a notice to leave upon the Respondent.
 - (iii) The Respondent has accrued rent arrears.

- (iv) The Respondent had substantial rent arrears which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the notice to leave.
- (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicant has complied with the pre-action protocol.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

11. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact.
12. The Respondent had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit. The Tribunal is satisfied that Ground 12A has been established.
13. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Respondent has been a tenant since March 2021 and has only made payment of one month's rent. There has been no recent communication from the Respondent. The Respondent has not entered into any payment plans to repay the arrears, despite the Applicant having complied with the pre-action protocol and making the Respondent aware of sources of advice. The Respondent has stated that he does not intend to make payment of back rent. The Respondent did not attend the CMD to put forward any argument in respect of reasonableness.
14. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The sum outstanding is significant. There appears to be no prospect of the Respondent paying their ongoing rent or addressing the arrears. The Applicant has complied with the pre-action protocol.
15. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

16. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 24th April 2024.

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.

H Forbes

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Legal Member/Chair

20th March 2024
Date