



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/3996

**Re: Property at Flat 1, 198 Faifley Road, Clydebank, G81 5EG
 (“the Property”)**

Parties:

**Mr Philip Murtagh, 34 Bally Holland Road, Newry, County Down, BT34 2LU
 (“the Applicant”)**

**Homesure Property Management, Unit B5, Olympic Business Park, Drybridge Road, Dundonald, KA2 9BE
 (“the Applicant’s Representative”)**

**Mr Nathan Stewart, Flat 1, 198 Faifley Road, Clydebank, G81 5EG
 (“the Respondent”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Statement of Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 17 December 2019 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
- 1.3. The Applicant lodged with the Application:
 - 1.3.1. Private Residential Tenancy Agreement between the Applicant and the Respondent dated 2 May 2019, with electronic signing schedule;
 - 1.3.2. Notice to Leave to the Respondent dated 12 November 2019, with proof of service by email on 12 November 2019; and
 - 1.3.3. Rent statement for the period 1 May 2019 to 2 December 2019.
- 1.4. On 19 December 2019 the Applicant's Representative was asked to produce a copy of the notice given to the local authority as required under Section 56(1) of the 2016 Act.
- 1.5. On 19 December 2019, the Applicant's Representative produced a Section 11 notice sent to the local authority with proof of service by email on 19 December 2019.
- 1.6. On 8 January 2020, the tribunal's administration obtained a copy of the Title Sheet for the Property which showed the registered proprietor since 2 December 2009 as Alison Caroline Linden, 37b Clanyre Avenue, Newry, County Down, BT35 6EH, Northern Ireland.
- 1.7. On 15 January 2020, the tribunal requested further information to be provided by the Applicant's Representative to enable the Application to be considered further, namely:
 - 1.7.1. A mandate authorising the Applicant's Representative to act on behalf of the Applicant in the matter;

- 1.7.2. The owner's written consent to the granting of the private residential tenancy and to the Application being made.
- 1.7.3. A legal argument as to the validity of the notice period given in the notice to leave.
- 1.8. On 16 January 2020, the Applicant's Representative wrote to the tribunal asking the tribunal to clarify the above request. On 21 January 2020 the tribunal's administration replied stating that they were unable to answer his query because as an impartial judicial body the tribunal is unable to provide advice and guidance in respect of individual circumstances and that the Applicant's Representative may wish to seek his own legal advice on the matter. The caseworker stated that the information which the Applicant's Representative has been asked to provide was at the request of one of the legal members of the tribunal.
- 1.9. On 29 January 2020, the Applicant's Representative provided a copy of a letter dated 27 November 2009 from The Chamber Practice Solicitors, Chamber House, Constitution Road, Dundee, DD1 1LA to Miss A Linden, 37B Clanyre Avenue, Newry, County Down, Northern Ireland, BT35 6EH in respect of the purchase of the Property; and a letter dated 24 January 2020 from Alison Linden, 34 Ballyholland Road, Newry, BT34 2LU stating that she gives her full consent to the Applicant's Representative to deal with any matter arising in concern to Flat 1/198 Faifley Road, Clydebank, G81 5EG. The Applicant's Representative did not provide a mandate authorising him to act on behalf of the Applicant; nor did he provide the Property owner's written consent to the granting of the private residential tenancy by the Applicant and to the Application being made by the Applicant. The Applicant's Representative stated in relation to the third item requested by the tribunal that they had supplied the Respondent with 28 days' notice to leave as the total amount of rent arrears amounted to exactly three months' rent arrears and that they had allowed an extra 48 hours for the tenant to receive the document. He stated that as at 29 January 2020 the Respondent's balance of arrears was £1650.00 and that this was likely to increase by £500.00 on 2 February 2020.
- 1.10. On 6 February 2020, the Application was accepted for determination by the tribunal. Both parties were notified by letters dated 24 February 2020 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1000h on 27 March 2020 at Glasgow Tribunals Centre, Room 108, 20 York Street, Glasgow, G2 8GT. The Respondent was invited to make written representations in response to the Application by 16 March 2020. Both parties were advised that they were required to attend the

CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. Service was effected on the Respondent by Sheriff Officers.

- 1.11. The Respondent did not submit any representations or make any contact with the tribunal.
- 1.12. The CMD which had been due to take place on 27 March 2020 was postponed due to the Covid-19 pandemic and parties were notified of the postponement to a date to be advised.
- 1.13. A further CMD was fixed for 10 July 2020. The tribunal Directed that the CMD would take place by teleconference as a result of the ongoing Government restrictions in relation to the Covid-19 pandemic. On 12 June 2020, both parties were notified of the date and time of the CMD and that it would take place by teleconference, with details for joining the call.
- 1.14. A letter was sent to both parties on 9 July 2020 together with a Direction confirming the reasons that the CMD was to be conducted by teleconference. It was sent to the Applicants' Representative by email and to the Respondent by mail.

2. CMD: 1000h on 10 July 2020, Teleconference

- 2.1. Scott Thomson, Property Manager from the Applicant's Representative, attended the CMD teleconference on behalf of the Applicant.
- 2.2. The Respondent did not attend the CMD teleconference or make any contact with the tribunal's administration.
- 2.3. The tribunal, being satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with, proceeded with the Application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.4. Mr Thomson produced an updated rent statement for the period to 2 July 2020.

2.5. The tribunal chair raised the issue of the Applicant's title to make the Application as the Applicant is not the registered proprietor of the Property and there is no letter of authority from the registered proprietor giving consent to the Applicant to grant the PRT in his name or to make the Application in his name. The tribunal chair noted that this had been requested from the Applicant's Representative on 15 January 2020 but had not yet been provided. Mr Thomson referred to the letter already produced to the tribunal which stated that Ms Linden has given authority to the Applicant's Representative to act for her in all matters relating to the Property. Mr Thomson acknowledged that this was not what had been requested by the tribunal. Mr Thomson requested an adjournment to contact the proprietor and the Applicant in order to obtain the required documentation. The tribunal adjourned for this purpose.

2.6. Following the adjournment, Mr Thomson produced the requisite confirmation from the proprietor of the Property that she consented to the Applicant granting the PRT to the Respondent and to the Applicant making the Application for eviction in his name.

2.7. Ground upon which eviction is sought - Ground 12

2.8. The ground upon which the Applicant is seeking the Respondent's eviction is that he has failed to pay his rent for three or more consecutive months. Mr Thomson referred to the updated rent statement and stated that the rent arrears have continued to accrue. Since the Application was made, the Respondent has made payments of £200 and £150 on 28 December 2019 and 10 January 2020. As at 10 July 2020, the Respondent now owes the Applicant £4453.39.

2.9. Mr Thomson stated that the Respondent has been difficult to contact. He stated that due to Covid-19 the Applicant's Representative applied to obtain Universal Credit rental payments directly with a UC47 application. The application was accepted but the only payment was made on 6 May 2020 for £196.61. The Universal Credit was then stopped. Mr Thomson stated that he assumes that the Respondent is no longer entitled to Universal Credit.

2.10. Mr Thomson stated that the Applicant intends to make a civil application to the tribunal claim rent arrears in due course.

2.11. Notice to Leave

2.12. Clause 4 of the PRT allows for service of notices by email to the email address specified for the Respondent in Clause 1 of the PRT. The Notice to Leave dated 12 November 2019 was sent to the Respondent to by email to the specified email address dated 12 November 2019. The email attached the Notice to Leave, a rent ledger and explanatory notes. Mr Thomson produced a copy of the rent ledger which was attached to the email. The Notice stated that the Respondent was in rent arrears over three consecutive months, that the rent arrears stood at £1500 and made reference to the attached rent ledger. It further stated that no application would be made to the tribunal before 13 December 2019.

2.13. The Application was received by the tribunal on 17 December 2019.

2.14. Ground 12 – test for eviction on the ground of rent arrears.

2.15. Mr Thomson stated that he was proceeding under 12(2), the mandatory ground for eviction on the basis of rent arrears. He submitted that there is at least one months' rent outstanding today and there are at least three consecutive months of rent arrears.

2.16. Mr Thomson submitted that the arrears are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The only universal credit payment made was for £196.61 on 6 May 2020 and the benefit has now stopped. The Respondent has not made any submissions to the tribunal that it is because there is a delay or failure in the payment of relevant benefit.

3. The tribunal makes the following findings-in-fact:

3.1. The registered proprietor of the Property is Alison Linden, 34 Ballyholland Road, Newry, BT34 2LU.

3.2. The Applicant is the partner of the proprietor.

3.3. There is a Private Residential Tenancy between the Applicant and the Respondent dated 2 May 2019.

- 3.4. The registered proprietor consented to the Applicant granting the Private Residential Tenancy dated 2 May 2019 in favour of the Respondent.
- 3.5. The start date of the tenancy was 2 May 2019.
- 3.6. Rent is payable at the rate of £500.00 per calendar month on the 2nd day of each month.
- 3.7. As at 12 November 2019 the Respondent was in arrears of rent of £1500.00.
- 3.8. The Notice to Leave which was served on the Respondent includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.
- 3.9. The Notice to Leave attached a rent ledger specifying that as at 12 November 2019, the Respondent was in arrears of rent of £1500.00.
- 3.10. The Notice to Leave specified that an application to the tribunal would not be made before 13 December 2019.
- 3.11. The Application to the tribunal was made on 17 December 2019.
- 3.12. The registered proprietor of the Property consented to the Applicant making the Application to the tribunal.
- 3.13. As at 10 July 2020, the Respondent is in arrears of rent of £4453.39, which is greater than one months' rent under the tenancy.
- 3.14. As at 10 July 2020, the Respondent has been in arrears of rent for a continuous period up to and including 10 July 2020, of three or more consecutive months.
- 3.15. One payment of universal credit in the sum of £196.61 was paid directly to the Applicant's Representative on 6 May 2020.
- 3.16. No further direct Universal Credit payments have been made to the Applicant's Representative in respect of the Respondent.
- 3.17. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.

4. Findings in fact and law

4.1. The tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 have been established.

4.2. Because the tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 Act have been established, the tribunal must find that the Ground named in para 12(1) of Schedule 3 of the 2016 Act applies, namely that the Respondent has been in rent arrears for three or more consecutive months.

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.

10 July 2020

Susanne L. M. Tanner Q.C.
Legal Member/Chair