



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/22/4334

Property : 6 Wallace Avenue, Dundonald KA2 9HU (“Property”)

Parties:

John Mulhern, 58 Tantallon Road, Paisley PA2 9HS (“Applicant”)

Andrea Miller and Tracie Lorraine Bicker, 6 Wallace Avenue, Dundonald KA2 9HU (“Respondent”)

Ayr Housing Aid, 7 York Street, Ayr KA8 8AN (“Second Respondent’s Representative”)

Tribunal Members:

Joan Devine (Legal Member)

Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 3 March 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 4 November 2022 (“Notice to Leave”); copy email dated 4 November 2022 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 7 December 2022 and communication to the Respondent regarding arrears dated 23 November 2022

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 22 March 2023 by teleconference. Reference is made to the note of the CMD which narrates that it was not clear whether 6 months

rent was outstanding at the date of service of the Notice to Leave. The outcome was that a continued CMD was fixed and a direction was issued.

In terms of the direction the Applicant was to provide :

1. A clear rent statement, capable of being understood by the objective reader, which requires to contain all rent records throughout the entire duration of the tenancy to include all payments as they fell due and all payments made recording when they were paid and by whom.
2. A supplementary written submission setting out his personal and financial circumstances.

In terms of the direction the Respondent was to provide :

1. A written submission setting out their respective positions on the application setting out any defence they intend to rely upon and which sets out their respective personal and financial circumstances to include any offer made regarding outstanding rent due.

In response to the direction the Applicant lodged a written submission along with a rent statement as at 16 April 2023, proposed repayment plan issued in 11 July 2022, proposed repayment plan follow up email issued on 26 July 2023 and proposed repayment plan issued by email on 23 November 2022.

The First Respondent did not respond to the direction. The Representative for the Second Respondent responded to say that the Second Respondent had arranged to move out of the Property and would not continue to oppose the grant of an order for possession and would not attend the continued CMD.

Continued CMD

A continued CMD took place on 16 June 2023 by teleconference. The Applicant was in attendance along with his wife, Vivienne Mulhern. There was no appearance by the Respondent. The Applicant told the Tribunal as far as he knew the Respondent continued to occupy the Property. The Tribunal asked about Andrea Miller's mental health which had been raised at the first CMD. The Applicant said he did not have any information in that regard. Mrs Mulhern said she understood that Andrea Miller suffered from anxiety. The Applicant said that he intended to re-let the Property which formed part of a small portfolio. The Applicant said that he had been experiencing difficulty gaining access to the Property for gas safety checks. The Applicant said that his last contact with Andrea Miller was December 2022 and with Tracie Bicker was in quarter one of 2022. The Tribunal noted that the arrears had built up between January

and October 2022. The applicant said he understood that Andrea Miller worked in the local pub and had lost her job at that time.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 3 March 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 4 November 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 8 December 2022.
4. At the date of service of the Notice to Leave the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 7 December 2022.
6. At the date of making the Application, the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12A which states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*
- (2) *The First-tier Tribunal that the ground named in paragraph 1 applies if –*
 - (a) *the tenant has accrued rent arrears under the tenancy agreement 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 agreement 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.

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.

J Devine

**Joan Devine
Legal Member**

Date : 16 June 2023