



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/22/2803

Re: Property at 2 Stables Cottages, Coodham, Symington, Kilmarnock, KA1 5PH (“the Property”)

Parties:

Mrs Suzanne McNally or Cichon, c/o Woodneuk House, Gateside, Glasgow, G78 1EP (“the Applicant”)

Mr Alastair Treymaine, 2 Stables Cottages, Coodham, Symington, Kilmarnock, KA1 5PH (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 10 August 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent was in arrears of rent over three consecutive months.

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 7 January 2021 at a monthly rent of £700, and a Notice to Leave, dated 4 November 2021, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 9 May 2022, together with a Rent Statement showing arrears as at 7 October 2021 of £3,500.

The Applicant also provided the Tribunal with a copy of a letter to the Respondent, dated 4 November 2021, signposting sources of help and advice, including Shelter Scotland and Citizens Advice.

On 12 December 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 2 January 2023. The Respondent did not make any written representations to the Tribunal. The Tribunal's letter with the case papers was served on the Respondent by sheriff officers on 16 December 2022, by being posted through the letterbox of the Property.

On 19 January 2023, the Applicant's representatives provided an updated rent statement showing arrears as at 7 December 2022 of £11,590.41. The statement indicated that there had been no payment received since April 2022. They provided copies of the letters to that effect sent to the Respondent by First Class post and by Recorded Delivery.

On 7 February 2023, the Respondent asked the Tribunal to send him an electronic version of the case papers, a request with which the Tribunal complied.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 8 February 2023. The Applicant was represented by Kirstie Donnelly of TC Young LLP, solicitors, Glasgow. The Respondent was also present. The Respondent accepted that no rent had been paid since the date of the application.

The Respondent told the Tribunal that he had never received the Tribunal's letter of 12 December 2012 with the case papers. He had at the time been in hospital due to a pulmonary condition, but a neighbour had keys and had been checking the Property and passing on mail. He said that he lived in the Property with his disabled daughter, who is 16 and that he had made an application to the local authority to be rehoused. He contended that, due to the failure of the Applicant to carry out repairs to the Property, he had withheld the rent, which he had placed in a separate account and that his health condition had been caused by the condition of the Property. The first he had known of the proceedings had been when he received a letter from the Applicant's solicitors with the updated rent statement. He said that he did not object to an Eviction Order being made and that he was no longer living in the Property, due to his health condition. He was staying temporarily with a friend and the last of his belongings would be removed from the Property by the middle to end of next week. A neighbour now had all the keys.

For the Applicant, Ms Donnelly asked the Tribunal to accept an amendment to the application to correct the spelling of the Respondent's first name. The Respondent had no objection to this, and the Tribunal was content to amend as requested. Ms Donnelly confirmed that repairs issues had been reported to the letting agents, but that there had then been problems with access to allow these to be investigated. The letting agents had arranged for a roofer to inspect the Property on 22 December 2022. The neighbour had the keys and telephoned the Respondent when the roofer arrived,

but the Respondent instructed the neighbour not to hand over the keys. The Respondent denied that there had been access issues, He said that 6 roofing contractors had been to the Property and 3 had provided estimates. There had also been an inspection by a window contractors and by damp specialists.

Ms Donnelly told the Tribunal that her client's letting agents had not received any intimation from the Respondent that he was withholding the rent, that no proof had been provided by the Respondent regarding the outstanding rent being held in a separate account and that, although the Respondent had indicated that he will have vacated the Property by the end of next week, her instructions remained to ask for an Eviction Order.

The Parties then left the Case Management Discussion and the Tribunal Members considered all the information before them and the oral submissions of both Parties.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal did not accept the Respondent's assertion that he had not received the Tribunal's letter of 12 December. Sheriff officers had issued a certificate that they had

served the letter and case papers by depositing a copy through the letterbox of the Property. The Respondent may have been in hospital at the time, with a neighbour checking the Property and passing on letters to him, but the Tribunal regarded the sheriff officers' certificate as conclusive evidence of service on the Respondent.

The Tribunal did not make any finding as to whether the Respondent might have been entitled to withhold rent or whether his health condition had been caused or attributed to by the condition of the Property. He had not provided any evidence that he had intimated to the Applicant or her letting agents any intention to withhold the rent and the Applicant's solicitor had told the Tribunal that the letting agents had not received any such intimation. The Tribunal noted the Respondent's statement that the outstanding rent was being held in a separate account and that he had told the letting agents regularly that this was the case and advised them of the amount in the account. The view of the Tribunal was that this was inconsistent with the sending of a series of reminder letters by the letting agents to the Respondent between March and November 2021 and the Tribunal determined that it preferred the Applicant's version of events.

The Tribunal also noted that, not only had the Respondent not reacted to the Tribunal's letter of 12 December 2022 (which he denied having received, but which the Tribunal determined had been validly served on him), but he had not responded when he received the email from the Applicant's solicitors of 19 January 2023. He had told the Tribunal that he had been in regular contact with the letting agents regarding his withholding of rent, and yet he had not contacted either the Applicant's solicitors or the Tribunal when he became aware of the proceedings against him, until the afternoon of the day before the Case Management Discussion, almost 3 weeks after the Applicant's solicitors' letter to him of 19 January 2023 and nearly two months after the date of the Tribunal's intimation of the Case Management Discussion and service of the case papers. He had provided no evidence to support the claims he had made at the Case Management Discussion. The arrears of rent were very high, and the Respondent had made no payments at all since April 2022. The Tribunal did not find the Respondent's stated position to be credible, as he had, he said, been in regular contact with the letting agents, so was actively engaged in the matters at issue, but he not made any written representations to the Tribunal in advance of the Case Management Discussion and had not contacted the Tribunal or the Applicant's solicitors following their letter to him of 19 January 2023.

The Tribunal noted that the Respondent had stated that he is in the process of moving out and that he will have vacated the Property by the end of next week. The Tribunal considered that it was reasonable for the Applicant to continue to seek an Eviction Order as a precaution.

Having considered carefully all the evidence before it, the Tribunal decided that, on the balance of probabilities, it preferred the evidence of the Applicant and that it was reasonable to issue an Eviction Order against the Respondent.

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.

G. Clark

Legal Member/Chair

8 February 2023
Date