



Decision 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/22/1420

Re: Property at 2D Baker Street, Hawick, TD9 9BW (“the Property”)

Parties:

Bannerman Burke Properties, 28 High Street, Hawick, TD9 9BY (“the Applicant”)

Mr Anton Curtis, 2D Baker Street, Hawick, TD9 9BW (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

On 13th May 2022 the Applicant lodged an application with the Tribunal in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondents in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the Application were:

1. Copy Tenancy Agreement with commencement date 19th June 2020 with rent of £300 per month
2. Notice to Leave dated 30th July 2021 to leave on 8th February 2022
3. Proof of Service of Notice to Leave
4. 2 Pre Action Requirement Letters dated 14th March 2022 and 30th March 2022
5. Section 11 Notice

The papers were served on the Respondents by Sheriff Officer on 15th August 2022.

Case Management Discussion

A Case Management Discussion (“CMD”) took place by teleconference on 29th September 2022.

The Applicant was represented by Mr Robertson, Solicitor, of Bannerman Burke Law. The Respondent represented himself.

Mr Robertson confirmed that he was seeking an order for eviction in terms of the application, based on the Respondent’s rent arrears.

The Respondent confirmed that he was opposing the application for eviction.

Mr Robertson said that the current arrears were £7500. There had been no payment of rent for 25 months. He said that the tenancy had commenced on 19th June 2020 and that the respondent had only paid rent for the first two months.

The Respondent said that he had thought that he had paid the first three months’ rent but accepted that he was substantially in arrears.

The Tribunal found that Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 had been established. It is thereafter for the tribunal to decide if it is reasonable to grant the order for eviction.

Mr Curtis did not consider it to be reasonable. He said that he had been left without hot water for 18 months and it was only sorted in April 2022. He said that the roof let in water and continued to do so. He said that the property was heated by electric heaters but that they did not work. He had reported all these issues to the landlord several times, in person. He has ADHD and became upset when a letter arrived saying that the landlord was going to inspect the property whether he was in or not.

Mr Robertson did not have any information to hand to allow him to answer these points. The Tribunal decided that the case would need to proceed to a Hearing to determine reasonableness.

The issue in dispute was reasonableness, in light of the allegations made by the respondent about the condition of the property and whether he was entitled to withhold rent on that basis.

The parties were guided towards the Tribunal’s Rules and the respondent was encouraged to seek advice from an independent agency.

On 2nd December 2022 the Tribunal intimated the date fixed for the Hearing to both parties, by email.

Hearing

The Hearing took place by teleconference on 19th January 2023.

The Applicant was represented by Mr Burke. He confirmed that he was a partner in Bannerman Burke Properties, who own the let property.

The Respondent did not dial in. The Tribunal were satisfied that he had had notification of the Hearing and were content to proceed in his absence.

The Tribunal reminded Mr Burke that it had previously held that the ground was established, so he now required to satisfy the Tribunal regarding reasonableness.

Mr Burke said that as far as he was aware the Respondent still lived in the property. The Applicants had made numerous attempts to contact him without success. He had not paid any rent since August 2020, and was now 20 months in arrears, equating to £8700.

Mr Burke said that he thought that the Respondent was in employment, he had been at the commencement of the tenancy and the Applicants had never been advised otherwise. He was not aware if the Respondent received any benefits.

Mr Burke said that the Respondent lived alone in the property, and it had not been adapted in relation to any disability.

The Tribunal asked Mr Burke to comment on the claims made by the Respondent at the CMD regarding the condition of the property. Mr Burke said that the hot water issue was repaired within a week of the Respondent intimating it to the Applicants. The first time they had heard anything about a roof leak was when the Respondent mentioned it at the CMD. They contacted him for access but he did not respond. Mr Burke said that around two months ago the other partner, Mr Bannerman, had to access the property as there was a complaint from the downstairs neighbour about a leak. The Respondent was not there but there was a dog in the property. Mr Bannerman noted that the heaters appeared to be working. It was subsequently discovered that the leak was in the neighbour's own property.

Findings In Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 19th June 2020;
3. The monthly rent was £300;
4. A Notice To Leave, dated 30th July 2021, was served timeously and correctly;
5. Rent arrears at the date of service of the Notice to Leave were £1800;
6. Rent arrears at the date of the application were £5100;

7. Rent arrears at the date of the CMD were £7500;
8. Rent arrears at the date of the hearing are £8700;
9. The Respondent has not engaged with the Applicant;
10. Repairs were carried out as and when notified to the Applicants.

Reasons For Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1) The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2) In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3) In schedule 3 (eviction grounds)—

(a) in paragraph 1(2) (landlord intends to sell)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (a), the word "and" is repealed,

(iii) after paragraph (b) insert " and

"(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b) in paragraph 2(2) (property to be sold by lender)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (b), the word "and" is repealed,

(iii) after paragraph (c) insert " and

"(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c) in paragraph 3(2) (landlord intends to refurbish)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (b), the word "and" is repealed,

(iii) after paragraph (c) insert " and

"(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(d) in paragraph 4(2) (landlord intends to live in property)—

(i) for "must" substitute "may",

(ii) the words from “the landlord” to “3 months” become paragraph (a),

(iii) after paragraph (a) insert “, and

“(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “home” become paragraph (a),

(iii) after paragraph (a) insert “, and

“(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g) in paragraph 8 (not an employee)—

(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii) for sub-paragraph (2)(c) substitute—

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(b a)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established Ground 12 by the level of the arrears.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal noted that no rent had been paid and no contact had been made by the respondent to the Applicant since the CMD.

The rent arrears stood at a very high level. The Respondent had not established that any repairs were outstanding. The Tribunal considered in those circumstances that it was reasonable to grant the order.

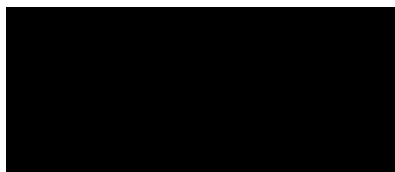
Right of Appeal

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal’s decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

LegalMember/Chair:



Date: 19/01/2023

