



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/23/0190

Re: Property at Flat 4 12 Kilinside Road, Paisley, PA1 1SJ (“the Property”)

Parties:

Mr GRAHAM BROWN, WELLBANK, MAIN STREET, HOWWOOD, RENFREWSHIRE, PA9 1AW (“the Applicant”)

MR GLEN MARTIN, Flat 4 12 Kilinside Road, Paisley, PA1 1SJ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) tenancy agreement
- (5) evidence of pre-action protocol
- (6) rent statement

3. A case management discussion was held on 9 May 2023. The applicant's agent, Mr Bell, from Jackson Boyd Lawyers and his letting agent, Mr Canning, from Pennylane Homes both appeared on behalf of the applicant. The respondent did not appear. There was evidence of service of the papers and notice of today's case management discussion on the respondent on 30 March 2023. The tribunal agreed to proceed with the case management discussion in the absence of the respondent.

Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears). There had been 6 months rent arrears when the notice to leave was served on the respondent, and there were now 11 months rent arrears outstanding. The rent arrears due now totalled £6050 and a further payment had now also recently become due. The rent due was £550 a month.
5. The letting agent advised that there were no benefit issues relating to the respondent. He advised that the respondent had been a professional let. He was in employment when he took the tenancy. He was not aware that there had been any changes to the respondent's employment situation. He advised that there had been a number of attempts to contact the respondent by email and attending at the tenancy, by both the letting agent and the landlord, these attempts had not been successful. He could not recall the last time that the

respondent had contacted him it was so long ago. He believed that the respondent was still residing in the property. It was just the respondent who resided in the property, he did not have any dependents.

6. The applicant's agent advised that the applicant owned three properties and two were subject to a mortgage. He advised that the applicant was a self employed piano tuner, and failure by the respondent to pay his rent was having a significant impact on the applicant's income, it had reduced his income by 25%. He has one dependent, an 11 year old son. He hoped to secure an eviction order and thereafter relet the property in order to recover this income level.

Findings in Fact

7. The Tribunal found the following facts established: -
8. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 6 July 2021.
9. The tenant was Glen Martin.
10. The landlord was Graham Brown.
11. The property was 4, 12 Kilnside Road, Paisley.
12. Clause 8 of the tenancy stated that rent was £550 a calendar month payable in advance.
13. There was submitted a notice to leave dated 14 December 2022, stating that an application would not be made until 16 January 2023. It sought eviction under ground 12A - substantial rent arrears (equivalent to 6 months worth of rent). It set out that no rent had been paid in the months June to December

2022. There were therefore 6 full months of rent due when the notice was served totalling £3300.

14. The notice to leave had been emailed to the tenant. There was evidence of service.

15. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority.

16. There was a rent statement submitted with the application on 17 January 2021 showing arrears outstanding of £4400.

17. There was a rent statement submitted prior to the case management discussion on 9 May 2023 showing arrears outstanding of £6,050.

18. There was evidence that the pre-action protocol requirements had been followed.

19. There was no evidence of failure or delay in any benefit payment to the respondent.

20. The respondent had failed to contact the letting agent or landlord to discuss the rent arrears.

Reasons for Decision

21. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

22. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms :-

“Substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph](#)

(1) applies if—

(a) the tenant has accrued rent arrears under the tenancy 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 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.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). ...

23. The applicant’s agent appeared. The respondent did not appear. The applicant’s agent confirmed that his client sought an order for eviction based on the fact that when the notice to leave had been served there had been at least 6 months rent arrears due to the applicant.

24. The tribunal found that the first part of the ground 12A was met. The tribunal therefore required to go on to consider if it would be reasonable to grant the

order. We took into account that there appeared to be no failure or delay in any benefit payment due to the respondent. Further, the letting agent had sent out pre-action protocol correspondence to the respondent. We also noted that the letting agent and the landlord had both made a number of attempts to contact the respondent about his rent arrears, however the respondent had failed to respond to these attempts to contact him, and no offer to make repayment had been forthcoming from the respondent. In addition, we noted that there appeared to be no dependents in the property living with the respondent. In contrast the applicant's agents advised that the applicant relied on the rent payments as a substantial part of his regular income, and the loss of rent was having a detrimental impact on him. He had other outgoings which included paying two mortgages. He had one dependant son. We note that the arrears have continued to accrue and are now over £6000.

25. Considering the papers before us and the oral submission by the applicant's agents, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12A was met and in all the circumstances, it appeared to us to be reasonable to grant the order.

Decision

26. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Date: 09/05/2023

Legal Member/Chair