



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/20/0333

Re: Property at 9A Caroline Place, Fraserburgh, AB43 9HR (“the Property”)

Parties:

Mr Anthony McLeod, 21G Seaforth Road, Aberdeen, AB24 5PW (“the Applicant”)

Mr Martyn Davidson, 9A Caroline Place, Fraserburgh, AB43 9HR (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

Background

1 By application dated 29 January 2020 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Notice to Leave dated 9 December 2019 stating that proceedings for possession will commence no earlier than 10 January 2020 and citing grounds 11 and 12, together with proof of hand delivery;
- (ii) Copy Tenancy Agreement;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council;
 - (iv) Rent Statement
- 2 By Notice of Acceptance of Application dated 21st February 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 31 March 2020. On 2 March 2020 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers
 - 3 Following the imposition of restrictions arising from the Covid-19 pandemic the Case Management Discussion was postponed to 17th July 2020. A direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. Notification of the date and time, together with instructions on how to join the teleconference was intimated to the Applicant by email and the Respondent by mail on 15 June 2020.

Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 17 July 2020. The Applicant was represented Miss Donna Yeats, Solicitor
- 5 Having noted that the application paperwork had been served personally on the Respondent by Sheriff Officers in the first instance, and that notification of the postponed Case Management Discussion had been sent by recorded delivery to the address where Sheriff Officers had confirmed he was resident, the Legal Member determined to proceed with the Case Management Discussion in his absence having been satisfied that he had received proper notification of the date, time and procedures for joining the tele-conference.
- 6 Miss Yeats advised that the Applicant had purchased the property in July 2019, with the Respondent as the sitting tenant. The previous owner had signed a written tenancy agreement with the Respondent requiring payment of rent at the rate of £354 per month. Whilst the tenancy agreement was in the wrong format, nevertheless it had created a private residential tenancy between the parties, being a tenancy entered into in 2018 after that statutory regime had come into force. The previous owner's interest in the tenancy had transferred to the Applicant upon his purchase of the property. The Respondent had initially made payments of rent to the Applicant however these stopped in September 2019. The Respondent had paid nothing since. The arrears had now increased to £3186. The Applicant had heard nothing from the Respondent. It was his

understanding that the Respondent was still residing in the property however he has not made any contact with the Applicant nor offered any repayment. The Applicant therefore sought the order for repossession. Upon questioning from the Tribunal, Ms Yeats confirmed that neither she nor the Applicant was aware with any issues with relevant benefits that could have resulted in the rent arrears.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016, namely Sections 1, 51 and Paragraphs 11 and 12 of Schedule 3:-

1 - Meaning of private residential tenancy

1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51First-tier Tribunal’s power to issue an eviction order

(1)The First-tier 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.

(2)The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3)The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4)An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Breach of tenancy agreement

11(1)It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

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

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Findings in Fact and Law

- 8 The Respondent entered into a tenancy agreement with the previous owner of the Property in terms of which he undertook to make payment of rent at the rate of £354 per month.
- 9 The tenancy between the Respondent and the previous owner was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 10 The previous owner's interest in the tenancy transferred to the Applicant upon his purchase of the property on 12 July 2019.
- 11 The Respondent paid the sum of £354 to the Applicant in August 2019 and September 2019. The Respondent has made no further payments to the Applicant.
- 12 On 9th December 2019 the Applicant's Representative hand delivered a Notice to Leave to the Respondent. The Notice to Leave cited grounds 11 and 12 and confirmed that proceedings would not be raised any earlier than 10th January 2020.
- 13 The Notice to Leave was in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and complies with the provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
- 14 As at the date of service of the Notice to Leave arrears in the sum of £1062 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £3186 were outstanding.
- 16 The rent account has been in arrears for three or more consecutive months.
- 17 The rent arrears are not a result of any delay or failure in the payment of a relevant benefit.
- 18 The provisions of paragraph 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 have been met.

Reasons for Decision

- 19 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the

application paperwork had been served upon the Respondent by Sheriff Officers and he had subsequently received notification of the date, time and case conference joining details for the adjourned Case Management Discussion. The Tribunal could therefore reasonably assume that he was aware of the proceedings and had been given the opportunity to engage in the process.

- 20 The Applicant submits that the tenancy between the parties is a private residential tenancy, as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal accepted this to be the case. A written tenancy agreement was entered into between the Respondent and the previous owner of the property which, whilst not in the correct format, had created the private residential tenancy. The previous owner's interest in the tenancy had since transferred to the Applicant by virtue of his purchasing the property. The Tribunal further accepted that the Respondent had an obligation under the terms of the tenancy to make payment of rent at the rate of £354 per month.
- 21 The Applicant sought recovery of possession under grounds 11 and 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that a valid Notice to Leave had been served upon the Respondent confirming the Applicant was relying up those grounds as part of the proceedings against him. The Tribunal considered however that the Applicant could not rely upon ground 11 in respect of his application. The sole basis upon which the application was founded was the Respondent's failure to pay rent. Ground 11 enables a landlord to seek repossession where the tenant is in breach of an obligation of the tenancy, however it expressly excludes payment of rent. The Tribunal therefore determined that it could only consider ground 12 in its determination of the application.
- 22 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. In accordance with the provisions of that ground under Schedule 3 of the 2016 Act the Tribunal must grant an order for repossession where:-
- (i) 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 one month's rent under the tenancy on that day, and has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and
 - (ii) 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.
- 23 The Tribunal had considered the rent statement produced by the Applicant which confirmed arrears of £1,062 were outstanding when the Notice to Leave was served and the submissions from Ms Yeats on behalf of the Applicant at the Case

Management Discussion which confirmed arrears had since risen to £3186 and the Respondent had paid nothing since September 2019. There was no evidence before the Tribunal to suggest that the arrears were a result of any failure or delay in the payment of a relevant benefit.

24 In the absence of any conflicting position from the Respondent the Tribunal considered that a hearing was not required in the matter and it could therefore determine the application at the Case Management Discussion. Based on the evidence from the Applicant, and the outstanding rent arrears, which were unchallenged by the Respondent, the Tribunal concluded that ground 12 had been met. Accordingly the Tribunal was obliged to grant an order for repossession.

25 The Tribunal therefore made an order for repossession 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.

Ruth O'Hare

17th July 2020

Legal Member/Chair

Date