



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/21/2453

Re: Property at 49 Gellymill Street, Macduff, AB44 1UX (“the Property”)

Parties:

Mr Matthew Dear, Wassail, West End, John O'Groats, KW1 4YR (“the Applicant”)

Mrs Karen Cruickshank, 49 Gellymill Street, Macduff, AB44 1UX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Linda Reid (Ordinary 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 eviction against the Respondent.

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property 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) Private Residential Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 10 July 2020 stating that proceedings for possession will commence no earlier than 16 July 2021 and citing ground 12, together with proof of service on the tenant;
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council together with proof of service;

- (iv) Copy correspondence between the Applicant and Respondent; and
 - (v) Rent Statement showing arrears of £3988.30 as at October 2021.
- 2 By Notice of Acceptance of Application dated 22 December 2021 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 the 24 February 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussions

- 3 The Case Management Discussion took place by teleconference on 24 February 2022. The Applicant was present. The Respondent did not attend. The Tribunal was conscious that the Respondent had received notification of the date and time of the Case Management Discussion and therefore proceeded in her absence.
- 4 The Tribunal proceeded to hear from the Applicant. He explained that the arrears had increased over a period of time, and he had no option but to commence the repossession proceedings. The Respondent was in receipt of housing benefit but it did not cover the monthly rent. He confirmed that the Respondent resided alone, she had previously lived with her daughter who had recently moved out. The tenancy was previously a joint tenancy with the Respondent's sister, however in January 2020 the tenancy reverted to a sole tenancy with the Respondent. The Applicant confirmed that he had been in regular correspondence with the Respondent as evidenced by the excerpt communications he had produced. He understood she was in the process of seeking a smaller property with the local council. He confirmed that he was not a professional landlord, this was the only property he rented out.

Relevant Legislation

- 5 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

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.

51 First-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 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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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

(3) The First-tier Tribunal may find that the ground named by subparagraph (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 subparagraph (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.

- 6 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

- 7 The parties entered into a Private Residential Tenancy Agreement which commenced on 14 January 2020.
- 8 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 9 On 10 July 2020 the Applicant delivered a Notice to Leave to the Respondent by recorded delivery mail. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 16 July 2021.
- 10 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 11 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £500 per calendar month.
- 12 As at the date of service of the Notice to Leave arrears in the sum of £2150 were outstanding.
- 13 As at the date of the Case Management Discussion arrears in the sum of £3563.30 were outstanding.
- 14 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.

- 15 The Applicant has sought to enter payment agreements with the Respondent and has offered assistance. The Respondent has stated her intention to seek alternative accommodation.
- 16 The Respondent resides alone with no dependents.
- 17 It is reasonable to make the order sought by the Applicant.
- 18 The provisions of ground 12 of Schedule 3 of the 2016 Act 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 Respondent had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 20 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that the Notice to Leave was competent.
- 21 The Tribunal accepted that there were rent arrears outstanding in the sum of £3563.30. It was apparent from the rent statement provided that arrears had initially accrued during a period when no rent was paid, and, now that housing benefit was in place, no payments were being made by the Respondent to address the ongoing shortfall. The rent arrears had been steadily increasing for approximately two years by the date of the Case Management Discussion.
- 22 The landlord's duty to comply with the pre-action requirements was also relevant to the application before the Tribunal and it therefore had to consider whether the Applicant had complied with that duty, and if not, what weight to give to any failure to comply having regard to the particular facts and circumstances of the case. The Tribunal was of the view that, whilst the Applicant could perhaps have done more to point the Respondent in the direction of advice and assistance to address the rent arrears, he had remained in constant contact with her and it did appear to the Tribunal that the eviction order was a last resort. The Tribunal also accepted that the Respondent was seeking alternative accommodation with the local authority, and it was likely that the granting of the order would assist her in that respect.

She had not chosen to enter the tribunal proceedings and there was nothing before the Tribunal to contradict the position put forward by the Applicant.

- 23 Accordingly, despite concluding that the Applicant could have taken additional steps to comply with the pre-action requirements, the Tribunal nevertheless considered that it would be reasonable to grant the order.
- 24 The Tribunal therefore determined to make an eviction order. The Tribunal would however suggest the Applicant familiarise himself with his obligations as a landlord, particularly in relation to the pre-action requirements and the terms of any tenancy agreement issued. It was noted that the tenancy agreement in this case did not conform to the model private residential tenancy agreement issued by the Scottish Government and the Applicant may wish to seek guidance on that issue for any subsequent tenancies.

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

Legal Member/Chair

24 February 2022

Date