



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing Tenancies Scotland Act 2016

Chamber Ref: FTS/HPC/EV/21/2749

Re: Property at 38 1/L Knoxville Road, Kilbirnie, KA25 7EB (“the Property”)

Parties:

Mrs Angela Cassidy, Mr Steven Cassidy, 42 1/L Holmhead, Kilbirnie, KA25 6BS (“the Applicant”)

Ms Clare Caldwell, 38 1/L Knoxville Road, Kilbirnie, KA25 7EB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

1. This was the first case management discussion (CMD) in respect of an application by the Applicant dated 4th November 2021 for an order for eviction against the Respondent who is the Tenant in the tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of the Tenancy Agreement dated 4th September 2018
 - Rent Statement to 4th November 2021 showing a sum due of £2749.40.
 - Notice to Leave dated 9th April 2021
 - S11 notice to North Ayrshire Council
 - E-mail to North Ayrshire Council dated 4th November 2021
 - Certificate of posting dated 9th April 2021
 - Mandate from Applicant authorising the letting agent to act for them.
2. The Tribunal issued a direction dated 10th December 2021 asking the Applicant to clarify the certificate of posting was in relation to the Notice to

Leave and to ask how the Applicant had complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020.

3. The Applicant's agent responded providing confirmation that the certificate of posting did relate to the notice to leave, and providing a copy of a letter sent in compliance of the regulations dated January 2021.

The **CMD** discussion

4. The CMD proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant did not attend but was represented by Miss Amy Rose Farrell.
5. The Respondent did not attend nor was she represented on the teleconference. The Respondent had been served notice of the CMD by sheriff officers on 3rd December 2021 and had been advised by letter of a change in the time of the CMD to 11.30am. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence.
6. Ms Farrell advised that she was seeking an order for eviction on the ground of rent arrears as sought in the application and referred to the documents lodged in support of this claim.
7. The written documentation shows a tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 4th September 2018.
8. The Rent due was £425 payable monthly in advance.
9. From the revised rent statement lodged arrears had built up from January 2019. At the date of service of the Notice to Leave the sum due was £1,926.20.
10. Ms Farrell explained that the Respondent is in receipt of housing benefit and that is all she has to pay her rent. She confirmed the rent is paid directly to the letting agents. Ms Farrell further advised that the amount of housing benefit reduced around December 2019 which the agent thought was due to the Respondent no longer receiving the second bedroom rate. She confirmed that she believes the Respondent is a lady living on her own in the Property and as such she is receiving £307.40 which is the single bedroom rate. Ms Farrell explained that she visited the Respondent personally, around September 2021, to discuss the rent arrears and offer support and was advised by the Respondent that she had no additional monies she could offer to pay towards the arrears but that she had been in touch with the council and put her name down for a council property.
11. Ms Farrell confirmed that the Respondent has never worked and so this situation with the arrears is not a result of issues caused by Covid 19 but more due to the Respondent's circumstances. She confirmed that due to the fact 2 more rent payments have become due since the application was submitted, but 3 more payments of benefit have been received, the amount currently due is slightly less than that shown on the rent statement that accompanied the application. She confirmed the amount currently due is £2,677.20 Ms Farrell confirmed that she is satisfied the Respondent is receiving the full housing benefit she is entitled to and confirmed that she had

suggested the tenant speak to money matters if she required any further help. Ms Farrell also confirmed her agency has sent various documentation to the Council to assist with what she believes is the Respondent's application to the housing department of the Council.

12. Ms Farrell also advised that the rent arrears is causing financial difficulties for the landlords as they still require to meet all their financial obligations in relation to the Property such as mortgage payments, insurance and other bills relating to the Property and cannot afford to allow the situation to carry on given the Respondent is unable to offer any further sums to pay the monthly shortfall or reduce the arrears.

Findings in Fact

1. The parties entered into a lease of the Property which commenced on 4th September 2018.
2. The Rent due in terms of the lease is £425 monthly payable in advance
3. The tenant is still living in the property.
4. The Respondent has been continuously in arrears of payment of her rent since January 2019.
5. The rent outstanding is currently £2,667.20.
6. The Respondent is in receipt of benefits which do not meet her monthly rent due and so the shortfall means the rent arrears will continue to increase.
7. A notice to leave was served on the Respondent on 9th April 2021 by recorded delivery confirming that no proceedings would be raised before 12th October 2021
8. The Respondent has been in arrears of rent for more than 3 consecutive months at the date of service of the Notice to Leave and at today's date.
9. These proceedings were raised on 4th November 2021 and the application included a copy of the Notice to Leave.
10. A s11 notice was served on North Ayrshire Council on 4th November 2021

Reasons

1. A ground of action under Ground 12 of Schedule 3 to the Act is :-
 - a. "Rent Arrears – It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months –
 - i. The First Trier Tribunal may find that the ground named by sub-paragraph (1) applies if –
 - b. For three or more consecutive months the tenant has been in arrears of rent and
 - c. *The Tribunal is satisfied that it is **reasonable** on account of that fact to issue an eviction order.*
 - d. *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."*
2. The Tribunal requires to be satisfied that it is reasonable to grant an order for eviction before it grants such an order. In addition in terms of the Rent

Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 the Tribunal should take account of what the landlord has done to comply with that in regarding what is reasonable.


3. The parties entered into a lease where the Respondent has leased the property from the Applicant from 4th September 2018 and has agreed to pay £425 per month in rent.
4. Rent arrears have accrued since January 2019. Since around September 2020 the amount of benefit the Respondent has been receiving for her housing costs has reduced. The Respondent's benefits are paid directly to the letting agent for the rent. Currently the benefit is £307.40 which leaves a monthly shortfall of £91.98 (after adjusting for 13 payments a year). The Respondent is unable to pay anything towards her arrears or the monthly shortfall and so the arrears will continue to increase.
5. The Notice to Leave was dated 9th April 2021 and served on the same date. It requires the tenant to leave by 12th October 2021 and confirms more than 3 months rent was owed then and more than 3 months rent is currently owed and has been outstanding for more than 3 months.
6. The Tribunal notes that a S11 notice has been duly served on North Ayrshire Council and so was satisfied the application is competently made and from the evidence given in writing and orally, which the Tribunal found credible accepts that there are rent arrears of over 3 months and that there has been no attempt by the Respondent to pay these.
7. The Tribunal then considered whether or not it would be reasonable to grant the order of eviction. The Respondent has not made any representations nor has she attended this CMD so there is nothing for the Tribunal to consider directly in respect of the Respondent's views and nothing put forward to suggest it would be unreasonable to grant the application. Although the Applicant's letting agent has only sent one letter in compliance with the Pre Action Protocol requirements Ms Farrell has directly contacted the Respondent and offered support to the Respondent.. Ms Farrell believes that the Respondent is receiving all benefits that she is entitled to and probably needs a smaller house to meet the rent payments.
8. The Respondent has been afforded the opportunity to attend the Hearing and has not done so nor has she made any written representations disputing the facts or providing reasons why it would not be reasonable to grant the order for possession. The Tribunal accepts that the current shortfall in payment is putting a financial strain on the Applicants and the debt would keep increasing putting an additional burden on the Respondent who has been in touch with the council who will have a duty to offer help and support in the event of an eviction.
9. Taking all of the circumstances into account the Tribunal considers on balance that it is reasonable to grant the application and grants the order for possession.

- Decision

An order for possession is granted

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.

 Jan Todd

Legal Member/Chair:

Date: 14/01/2022