



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/2906

Re: Property at 31 The Braes, Saltcoats, KA21 5EP (“the Property”)

Parties:

Mr Sajid Afzal, 85 Dockhead Street, Saltcoats, KA21 5ED (“the Applicant”)

Mr Brian Irwin, 31 The Braes, Saltcoats, KA21 5EP (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction Order be granted against the Respondent in favour of the Applicant over the Property.

Background

1. The application for an eviction order was made on 22 November 2021 and accepted by the tribunal on 12 January 2022. The Applicant seeks an eviction Order under Ground 12 to the Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The paperwork was served on the Respondents by letterbox by Sheriff Officers service on 10 February 2022.
3. Written representations were invited by 2 March 2022. None were submitted.

The Case Management Discussion- 23 March 2022 at 10 a.m.

4. A Case Management Discussion (CMD) took place on 23 March 2022 by conference call.
5. The Applicant was represented by Ms Styles of Move 2 Lettings Ltd.

6. The Respondent did not participate. The tribunal had sight of an execution of service by Sheriff Officers of the tribunal papers on the Respondent on 10 February 2022. As proper intimation had been made, the tribunal was satisfied that the procedure was fair and proceeded in the Respondent's absence.
7. The paperwork submitted along with the Application was examined and discussed alongside the recently lodged documents that included an up to date rent schedule and letter to the Respondent intimating that the rent arrears now stood at £8076.25 considering the rent payment due on 25 March 2022.
8. The Applicant is the registered owner of the Property and landlord.
9. A Private Residential Tenancy (PRT) was entered into between the Applicants and the Respondent on 30 April 2018, with a start date of 14 May 2018. The document itself was erroneously named a Short Assured tenancy.
10. The rent is £95 per week payable in advance on the same day each week.
11. A Notice to Leave dated 17 May 2021 was served on the Respondent by first class 'signed for' post along with a cover letter and a separate letter outlining the arrears, rent due per week and signposted the tenant to benefits and sources of support and advice.
12. An extract of text exchanges between the Parties relating to rent arrears, non-payment, and routes to reach an agreement was also produced.
13. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the relevant local authority.
14. The rent account statements produced were considered. As of 23 March 2022, the rent arrears figure is £7981.25. The last payment was £500 on 29 October 2021.
15. Ms Styles had received confirmation from a neighbour that the Respondent was still resident in the Property. They had tried but had been unable to make contact with him. The payments had been sporadic for a lengthy period as evidenced by the rental statement. All payments that had been made had come directly from the Respondent's bank account and the landlord was accordingly unaware of any Universal Credit claim or any issues with completing such a claim that would impact on the arrears or the tribunals view of the situation. He was a single male with no dependents to their knowledge and no-one else was living in the Property. He was in employment in Arran and had been in and out of different jobs it appeared. He had no welfare issues that the landlord was aware of.
16. The Applicant's Representative relied on Ground 12 being satisfied regarding the figures for unpaid rent and submitted it was reasonable to grant the order having regard to the rent arrears figure outstanding.
17. A brief adjournment took place to allow discussion between the tribunal members.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Parties on 30 April 2018, with a start date of 14 May 2018

- II. The rent is £95 per week payable in advance on the same day each week from the date of entry.
- III. A Notice to Leave dated 17 May 2021 was served on the Respondent by first class 'signed for' post along with a cover letter and a separate letter outlining the arrears, rent due per week and signposted the tenant to benefits and forms of support.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the relevant local authority.
- V. The Pre Action Requirements have been complied with.
- VI. The total rent arrears figure due is £7,981.25
- VII. The last payment to rent was £500 paid into the rent account on 29 October 2021.
- VIII. The Respondent being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- IX. Ground 12 of Schedule 3, Part 3 to the Act is met.
- X. The Tribunal is satisfied that it is reasonable that an eviction Order be made.

Reasons for Decision

The Respondent did not participate nor were they represented. The tribunal had sight of an execution of service by Sheriff Officers of the tribunal papers on the Respondent on 10 February 2022. As proper intimation had been made, the tribunal was satisfied that the procedure was fair and proceeded in the Respondent's absence.

The tribunal had regard to all that was said and carefully considered the paperwork produced.

A Private Residential Tenancy (PRT) was entered into between the Parties starting on 14 May 2018. The Respondent had undertaken to pay rent. Rent arrears initially started to accrue from the end of November 2018. The total arrears figure due today is £7,981.25.

A Notice to Leave dated 17 May 2021 was served on the Respondent by first class 'signed for' post along with a cover letter and a separate letter outlining the arrears, rent due per week and signposted the tenant to benefits and sources of advice and support. The detail within the letter met the pre-action requirements. In addition, extensive efforts to seek to resolve the non-payment appeared to have been made by the Applicant in text exchanges with the Respondent and information was also given regarding benefit advice. This has met without success and no agreement has been reached on repayment terms.

A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority.

The Tribunal considered 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', which it was not.

The tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It considered the information given in the application and the other documents produced; given orally. The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020,

particularly the discretion to be applied. Whether it is reasonable to issue an eviction order against the tenant. To consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order. It was satisfied that the pre-action requirements had been complied with. The rent arrears have occurred over a long period of time. There had been no recent payments made at all and there was no proposal for payment of the ongoing rent, or towards the arrears. The information available at the time of the case management discussion was that the Respondent is in paid employment and has no known welfare issues. Ground 12 of Schedule 3, Part 3 to the Act is met. The Tribunal was satisfied an Order should be made and it was reasonable to do so. The decision is unanimous.

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.

Legal Member: Susan Christie

Date: 23 March 2022