



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/3054

Re: Property at 10 Norway Gardens, Dunfermline, Fife, KY11 8JW (“the Property”)

Parties:

Ms Margretta Chambers, 182 Carginagh Road, Kilkeel, Northern Ireland, BT34 4QA (“the Applicant”)

Mr James David O'Donnell, 10 Norway Gardens, Dunfermline, Fife, KY11 8JW (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elizabeth Currie (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 for recovery of possession should be granted in favour of the Applicant against the Respondent.

Background

1. An application was received from the Applicant's letting agent, Demia Ltd T/A Martin and Co, on 7 December 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Private residential tenancy agreement between the parties commencing on 4 August 2020.

- (ii) Copy notice to leave dated 1 June 2021, citing ground 12, and stating the date before proceedings could not be raised to be 4 December 2021, together with confirmation of service by email sent on 1 June 2021.
 - (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to Fife Council on 6 December 2021
 - (iv) Rent statement showing the rent outstanding as at 7 December 2021 to be £7100.
 - (v) Copy pre-action requirements (PAR) letters sent by the Applicant's agent to the Respondent regarding his arrears dated 16 and 26 March 2021 and 13 and 28 April 2021.
3. The application was accepted on 18 January 2022. Notice of the case management discussion (CMD) scheduled for 30 March 2022, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 16 February 2022.
 4. No written representations were received from the Respondent prior to the CMD.

The Case Management Discussion

5. A CMD was held by teleconference call on 30 March 2022. The Applicant was represented by Miss Sarah Scott, Property Manager, of Martin and Co. The Respondent was not present or represented on the teleconference call.
6. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes in case the Respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him. The tribunal therefore proceeded with the CMD in the absence of the Respondent in terms of rule 29 of the 2017 rules.
7. Miss Scott confirmed that the Respondent was, to the best of her knowledge, still living in the property. A gas engineer instructed by Martin and Co who had attended the property on 1 March 2022 had reported that the Respondent was in the property but had refused access for the gas safety inspection. She confirmed that the Respondent had not been in contact since a previous tribunal (consisting solely of the legal member who was part of the present tribunal) had granted a payment order against him in January (application ref: CV/21/2491). She confirmed that the Respondent had made no rental payments since 3 February 2021, and that the outstanding rent arrears now totalled £9050. She said that attempts had been made to agree a payment plan before the payment order had been granted. The Respondent had said that he wished to agree such a plan, but a plan had never been agreed.

Findings in Fact

8. The tribunal made the following findings in fact:
- The Applicant is the owner and registered landlord of the property. There was a private residential tenancy in place between the parties, which commenced on 8 August 2020.
 - The monthly rent payable in terms of the tenancy agreement was £650 per month, payable in advance on the 4th of each month.
 - The notice to leave was dated 1 June 2021 and was sent by email to the Respondent on that date. The notice stated that an application for an eviction order would not be submitted to the tribunal before 4 December 2021.
 - The Respondent owed rent arrears of £9050 as at the date of the CMD. He had been in rent arrears continuously since 4 January 2021.

Reasons for decision

9. Firstly, the tribunal was satisfied that the notice to leave had been validly served on the Respondent in terms of sections 54 and 62 of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020) (“the 2020 Act”).
10. The tribunal then considered whether Ground 12 had been established by the applicant.
11. Ground 12 as set out in Schedule 3 of the 2016 Act (as amended by the 2020 Act) states:

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.

12. The tribunal was satisfied on the evidence before it that the requirements for Ground 12 were established. It was clear from the rent statements before the tribunal that at the date of the CMD the Respondent was in arrears well in excess of one month's rent, and that he had been in arrears of rent for a continuous period of three or more consecutive months.
13. The tribunal then considered whether the Respondent's rent arrears were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, in terms of Ground 12 (2) (b). Miss Scott told the tribunal that it was her understanding that the Respondent had been working at the start of the tenancy, and that so far as she was aware he was still in employment. She said that she had not been aware of any benefits issues relating to the Respondent at any stage during his tenancy. She also confirmed that there had been no contact from any advice or other agencies on behalf of the Respondent.
14. In the absence of any evidence to the contrary from the Respondent, the tribunal accepted Miss Scott's evidence. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
15. The tribunal was therefore satisfied that Ground 12 applied. It was also satisfied that all or part of the rent in respect of which the Respondent was in arrears related to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) Act (No. 2) Act 2020 is in force, in terms of Paragraph 3A of Schedule 3 of the 2016 Act.
16. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 3 (b) of Ground 12 of Schedule 3 of the 2016 Act. In doing so, it took into account all of the circumstances of the case on the basis of all of the evidence before it.
17. As part of its consideration of whether it was reasonable to issue an eviction order against the Respondent, the tribunal considered the extent to which the applicant had complied with the pre-action requirements (as set out in The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020) before applying for the eviction order, as required in terms of Paragraph 3B of Ground 12 of Schedule 3 of the 2016 Act.
18. The tribunal noted the terms of the PAR letters dated 16 March 2021, 26 March 2021, 13 April 2021 and 28 April 2021 which the Applicant's agent had produced as part of the application. The tribunal noted that the letters included details of the level of outstanding rent arrears; the Respondent's rights in relation to eviction proceedings; and where he might access information and advice on financial support, benefits and debt management. They also stated

that the Applicant's agent was willing to work towards agreeing a payment plan to pay the arrears. The tribunal was satisfied that the Applicant had complied with the requirements set out in Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

19. The tribunal noted that the Respondent had accrued substantial rent arrears and had made no rental payments for more than a year. The Applicant had therefore received no rental income from the property during that time, which Miss Scott said had caused her some financial difficulty. She told the tribunal that the Applicant had a mortgage to pay in respect of the property, which was her only rental property. The Applicant was experiencing financial difficulties as a result of the Respondent's failure to pay his rent, and she was very distressed by the situation she found herself in.
20. The Respondent was not present and had submitted no written representations. There was accordingly little information available to the tribunal about his personal circumstances, beyond that which Miss Scott was able to provide. She told the tribunal that the Respondent lived alone in the property. At the start of the tenancy, she had understood that his three young children (who were between roughly the ages of two and eleven) would visit him on a regular basis, but that they did not live there permanently. She was unsure as to whether they were still visiting him at the property. The respondent had no health issues to her knowledge.
21. Having carefully considered all of the evidence and all of the circumstances of the case as set out at paragraphs 25- 29 above, the tribunal considered that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the Respondent under section 51 and Ground 12 in Schedule 3 of the 2016 Act.

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.

Sarah O'Neill

30/03/2022

Legal Member/Chair

Date